SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1966

No. 1183

ROBERT F. URBANO,

Petitioner,

against

FREDERIC SONDERN, JR.,

Respondent.

and

ROBERT F. URBANO,

Petitioner,

against

FAWCETT PUBLICATIONS, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ROBERT F. URBANO—*Pro Se,*
State Prison Number 37744,
New Jersey State Prison,
Drawer N, Trenton, N. J.

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Involved	2
Statutes Involved	2
Statement of the Case	3
The Sondern Case	5
The Fawcett Case	5
The Reasons for Granting the Writ	7
Conclusion	11

Appendices

Opinions of the Second Circuit Court of Appeals	1a
Opinion of U. S. District Court of Connecticut	6a
FBI "Press Release"	13a
Sondern Article	15a
Fawcett Article	17a

Citations

CASES:

	PAGE
Bauers v. Heisel, 3 Cir., 361 F.2d 581, cert. filed No. 528	10
Ching Fook v. White, 44 S.Ct. 361	9
Estes v. Texas, 85 S.Ct. 1628	7
Gilbert v. United States, 9 Cir., 366 F.2d 923	8
Griffin v. Illinois, 76 S.Ct. 585	10
Hogan v. New York Times Co., D. Conn., 211 F.Supp. 99, aff'd 2 Cir., 313 F.2d 354	8, 10
Jackson v. Denno, 84 S.Ct. 1774	8
Mattheis v. Hoyt, W.D. Mich., 136 F.Supp. 119	9
Rosenblatt v. Baer, 86 S.Ct. 669	8, 9
Sheppard v. Maxwell, 86 S.Ct. 1507	7
Sullivan v. New York Times Co., 84 S.Ct. 710	8
United States v. 64.10 Acres of Land, etc., 3 Cir., 362 F.2d 660	8
Urbano v. FBI, 87 S.Ct. 117	4, 5, 8
Urbano v. New Jersey, D.N.J., 225 F.Supp. 798, cert. probable cause den., 3 Cir., 333 F.2d 845, cert. den. 377 U.S. 958	4, 5
Urbano v. News Syndicate Co., S.D.N.Y., 232 F.Supp. 237, rev. & rem., 2 Cir., 358 F.2d 145, cert. den. News Syndicate Co. v. Urbano, 87 S.Ct. 68	9

OTHER AUTHORITIES CITED:

28 U. S. C. § 1915	2, 6, 9
28 U. S. C. § 1254(1)	2
Hall's Principles of Criminal Law (2 ed. 1960)	7

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FAWCETT PUBLICATIONS, INC.,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Robert F. Urbano respectfully petitions for a writ of certiorari to review judgments of the United States Court of Appeals for the Second Circuit.

Opinions Below

The opinions of the Court of Appeals are reported at 370 F.2d 13 and 14 (Appendix A). The single memorandum opinion of the District Court is unreported (Appendix B).

Jurisdiction

Both decisions of the Court of Appeals are, dated November 29, 1966. Rehearing was denied December 27, 1966 in the *Sondern* case and January 6, 1967 in the *Fawcett* case.

Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Questions Presented

1. Shall news media or courts determine guilt?

2. Must the plaintiff prove that he did *not* commit crimes charged in defamatory publications?

3. Without determining voluntariness, are alleged confessions of crime obtained in violation of constitutional rights evidential for any purpose in civil actions?

4. Can prisoners as a class be arbitrarily denied any redress in tort for reckless publications by news media alleging guilt for *other* crimes never officially prosecuted?

5. Does 28 U. S. C. § 1915 exclude prisoners as a class from bringing civil actions other than "habeas corpus"?

Statutes Involved

Title 28 U.S.C. § 1915. Proceedings in forma pauperis.

(a) Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b) In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States, and the same shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(c) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(d) The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.

(e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States. As amended May 24, 1949, c. 139, § 98, 63 Stat. 104; Oct. 31, 1951, c. 655, § 51(b, c), 65 Stat. 727; Sept. 21, 1959, Pub. L. 86-320, 73 Stat. 590.

Statement of the Case

Both diversity actions were commenced in forma pauperis in the United States District Court of Connecticut. However, before the decision of the Court of Appeals in the *Fawcett* case became final, petitioner swore that funds to pay costs had become available but was nevertheless denied leave to proceed in forma pauperis. At little addi-

tional expense and for plenary consideration, the *Sondern* case is included here but any further prosecution of the *Sondern* case in the lower courts must be in forma pauperis.

On May 19, 1960 petitioner was sentenced to life imprisonment in the New Jersey State Prison by the Bergen County Superior Court on plea of "non vult" to the indictment charging felony-murder. See *Urbano* v. *New Jersey,* D.N.J., 225 F.Supp. 798, cert. probable cause den., 3 Cir., 333 F.2d 845, cert. den. 377 U.S. 958.

Prior to conviction, *supra,* a hearing determined that petitioner was competent to stand trial. However, by August 4, 1960 petitioner was officially committed to the State Hospital to undergo intensive electro-shock (21) and narcotic therapy for "schizophrenic reaction, paranoid type" with violent hallucinations. At this time two FBI agents interrogated petitioner for two days and petitioner allegedly signed 10 "statements" actually composed by the interrogators that purport to detail numerous bank and other robberies.

The interrogators, *supra,* swore not but Bergen County Jail records show apparently unsuccessful interrogations there by the same FBI agents. In the *Sondern* case the interrogators also swore, contrary to express allegations of their prior affidavits, that petitioner had *orally* confessed to two additional robberies—necessary to respondent's case. Other invidious contradictions are readily apparent. See *Urbano* v. *FBI,* 87 S.Ct. 117.

In March and April of 1960 four FBI complaints for bank robbery were lodged as detainers but dismissed immediately after the "statements", *supra,* confessing the same crimes allegedly, were obtained. A fifth complaint was then lodged and dismissed on August 11, 1961. Nevertheless, a 7-page "press release" distributed September 14, 1961—officially the FBI denied distribution—alleged the fifth complaint was still pending (Appendix C).

Possibly from electro-shock therapy, *supra,* petitioner is amnesic from May of 1959 to early November of 1960. Petitioner learned of the FBI interrogation from the State Hospital staff. The release, *supra,* was first exhibited in *Urbano* v. *News Syndicate Co.,* S.D.N.Y., 232 F.Supp. 237, rev. & rem., 2 Cir., 358 F.2d 145, cert den. *News Syndicate Co.* v. *Urbano,* 87 S.Ct. 68. The "statements", *supra,* were first exhibited in *Urbano* v. *FBI, supra,* on June 30, 1965.

The *Sondern* Case

The December 1963 issue of *Reader's Digest* carried "The New-Style Bank Robber" by respondent Sondern (Appendix D). On October 20, 1965 leave to proceed in forma pauperis was granted and summons served in New York City on January 13, 1966 with additional summons served in Connecticut on June 7, 1966.

Petitioner moved to strike defenses of, *inter alia,* truth and privilege on the basis of the FBI release. On respondent's cross-motion for summary judgment the district court dismissed but granted leave to file notice of appeal in forma pauperis.

On November 29, 1966 the Court of Appeals affirmed and on December 27, 1966 rehearing was denied. On August 3, 1966 respondent Sondern died and his administratrix was substituted.

The *Fawcett* Case

The January 1963 issue of *True* magazine carried "The Case of the Three-Faced Crook" by Robert Liston (Appendix E). On November 5, 1963 the filing fee was waived but leave to proceed in forma pauperis was denied and the action held in abeyance until petitioner was able to pay the Marshal's fees. An offer of security on eventual recovery of property in France was rejected.

A transfer to the District of Massachusetts was returned to Connecticut on August 3, 1965 as the result of an error on the part of the district court.

On November 2, 1965 the Marshal was paid and an amended complaint served. Petitioner moved to strike the defenses alleged including privilege on the basis of the FBI release and the district court appointed counsel. Over objection on May 16, 1966 respondent was granted leave to add the defense of truth on the basis of the FBI "statements". Thereafter on June 27, 1966 the district court dismissed pursuant to 28 U.S.C. § 1915(d) but granted leave to file notice of appeal in forma pauperis.

Although the court of appeals affirmed on November 29, 1966, the opinion was not forwarded until December 15, 1966. On December 29, 1966, prior to denial of petition for rehearing, petitioner moved to remand the action to the district court since funds received from property in France, originally rejected as security, *supra,* had rendered moot the question of proceeding in forma pauperis. Nevertheless, on January 6, 1967 rehearing was denied, and *then* the remand was denied summarily.

On February 20, 1967 petitioner's motion to reinstate the action and pay costs was denied by the district court. Respondent opposed on the ground that a dismissal pursuant to 28 U. S. C. § 1915(d) was on the merits *even if costs are paid.*

In both cases petitioner's causes of action for libel rest solely upon the references to the bank and other robberies. Nowhere is it contended that publicity given to petitioner's conviction for homicide is libelous.

Petitioner is not incarcerated for and has not been indicted, tried nor convicted of any robbery and the Bergen County Judgment errs in showing a plea of "non vult" to "Murder in the Commission of Robbery" (An Indictment for "Attempt to Rob" was dismissed) where the transcript

and law of New Jersey are to the contrary. Petitioner never knowingly or intelligently confessed to any robbery and ambiguous references by expert witnesses in the sanity hearing in Bergen County are to the homicide or an Arizona burglary conviction or to matters not criminal.

Respondents do not seriously contend that the articles are not defamatory, rather that a once-convicted prisoner may be accused of any other crime that suits the defamer and his readers' fancy because bad character precludes damage to reputation in which a prisoner has no interest in any event.

The Reasons for Granting the Writ

The disposition of the instant cases by the lower courts raises substantial and undecided questions with regard to contempt of news media for the constitutional right to fair trial in a court of law and the equal protection of a prisoner for flagrant violations of his constitutional rights. "[I]f anything can be done to any convicted person, the guarantee of legality has in fact vanished entirely." *Hall's General Principles of Criminal Law* 55-56 (2 ed. 1960).

I.

The cases of *Sheppard* v. *Maxwell*, 86 S.Ct. 1507 and *Estes* v. *Texas*, 85 S.Ct. 1628 reflect need to restrain reckless news media usurping the functions of prosecutor, judge and jury. Outcries against crowded dockets and "pampering" of criminals can be *prevented* in part.

Petitioner is a prisoner but the eminent and respectable are also attacked. And that *Sheppard* finally was released from 10 years imprisonment by a fair trial is not justice. If *Sheppard* should succeed in tort actions, money damages will not compensate him. Prevention of reckless defamation would guarantee a fair trial in the first instance. *Rosenblatt* v. *Baer*, 86 S.Ct. 669 at 676.

II.

The court of appeals holding that petitioner must adduce "specific facts tending to show that he did not commit the crimes mentioned in defendant's article" is contrary to the evidence actually adduced and to constitutional and tort law. This is but another "step in the direction of holding that a judge rather than the jury is to have the determination of any fact in libel cases." *Rosenblatt* v. *Baer, supra.*

The constitutional presumption of innocence must prevail "Once 'libel per se' has been established," and *the defense* must "persuade the jury" that the plaintiff committed the crimes. *Sullivan* v. *New York Times Co.*, 84 S.Ct. 710 and 719 and *Hogan* v. *New York Times Co., D. Conn.* 211 F.Supp. 99, aff'd 2 Cir., 313 F. 2d 354.

III.

After publication, *Urbano* v. *FBI*, 87 S.Ct. 117, respondents discovered and the lower courts relied upon the FBI "statements", elicited from petitioner while committed as insane, to "prove" petitioner committed the crimes. *Ibid.* Due to amnesia petitioner is unable to recollect the circumstances of the FBI interrogations although petitioner's then condition is of record. (See *Gilbert* v. *United States*, 9 Cir., 366 F.2d 923 at 958-959 for possible pressures resorted to by the FBI.)

The voluntariness of the FBI "statements" has never been determined. *Jackson* v. *Denno*, 84 S.Ct. 1774. They may fall within the hypothesis of *Hoffa* v. *United States*, 87 S.Ct. 408 at 416. In any event, they are demonstrably false statements which is a "sound practical reason for barring" them. *United States* v. *64.10 Acres of Land, etc.*, 3 Cir., 362 F.2d 660 at 666.

IV.

Citation of *Mattheis* v. *Hoyt,* W.D. Mich., 136 F.Supp. 119 by the district court and sketchy opinions by the court of appeals foster the false impression that respondents' articles publicize only petitioner's lawful conviction and incarceration for homicide. (See also dissent in *Urbano* v. *News Syndicate Co.,* 2 Cir., 358 F.2d 145.

Actually the complaints are concerned solely with lurid charges in print that petitioner robbed banks and stores whereas, regardless of sources, respondents knew that petitioner has never been tried for nor convicted of a robbery as the FBI release stated. Even if petitioner committed the crimes, arguendo, the proper tribunal is a court of law.

The adverse effect of reckless and unwarranted accusations in print on further prosecution, prison conditions, parole, appeals and new trials cannot be calculated. Every prisoner is not insensible to foul blows when the man is down and to the turning away of anguished family and friends. "[T]he rights and values of private personality far transcend mere personal interests," (*Rosenblatt* v. *Baer,* 86 S.Ct. 669 at 680, perhaps more so in the case of a prisoner.

V.

The district court sets forth that 28 U. S. C. § 1915 should not be "available to prison inmates in non-habeas-corpus matters" since their motives are base, only nominal damages might be awarded, defendants and courts are "harassed", and, in any event, prison inmates have no interest in reputation.

Section 1915 is plain in not excluding meritorious tort actions by prison inmates as a class and, if they *should be* excluded, "the remedy lies with Congress and not with the courts." *Ching Fook* v. *White,* 44 S.Ct. 361. Every citizen

is guarded against invidious discrimination. *Griffin* v. *Illinois*, 76 S.Ct. 585 at 589-590.

That reliance upon Section 1915 to deny grievously-wronged prison inmates any legal recourse was spurious is apparent where both lower courts subsequently denied petitioner leave to prosecute the *Fawcett* case and *to pay costs*. See *Bauers* v. *Heisel*, 3 Cir., 361 F.2d 581, cert. filed No. 528 (ACLU).

VI.

The court of appeals finds it "highly unlikely" that petitioner could prove actual malice to overcome "qualified privilege to report the activities of public officials." See *Hogan* v. *New York Times Co., supra.*

The FBI "press release" is lurid matter indeed on the august stationery of the Department of Justice. Director Hoover swore that distribution was "at the request of the news media." *If* the release was privileged itself, even prima facie its factual errors, contradictory and unfounded conclusions, and ephemeral nature had to be plain to respondents publishing years later—particularly where Sondern swore to his expertise in law enforcement with the FBI and the Fawcett author was warned not to publish while in the course of his minute investigation.

Surely no one is privileged to republish even privileged official material if he *knows* that it is defamatory. From the release itself respondents knew that petitioner had never been prosecuted for nor convicted of any robbery. Only one-third of the *Fawcett* article might derive from the release and Sondern sets forth only the release's conclusions while invidiously associating petitioner with *convicted* bank robbers. Neither article mentions the FBI release as a source.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT F. URBANO—*Pro Se*

APPENDIX A

Opinions of Circuit Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 182—September Term, 1966.

(Submitted November 16, 1966 Decided November 29, 1966.)

Docket No. 30740

ROBERT F. URBANO,

Appellant,

v.

FREDERIC SONDERN, JR.,

Appellee.

Before:

LUMBARD, *Chief Judge,*

MEDINA and KAUFMAN, *Circuit Judges.*

Appeal from an order of the United States District Court for the District of Connecticut, Zampano, *J.*, dismissing appellant's action as frivolous, pursuant to 28 U. S. C. § 1915(d).

ROBERT F. URBANO, *Pro Se.*

LORD, DAY & LORD, New York, N. Y. (John W. Castles, 3d, Wendell Davis, Jr., of counsel), *for appellee.*

Appendix A—Opinions of Circuit Court of Appeals

PER CURIAM:

This is an appeal from an order of Judge Zampano of the District of Connecticut, dismissing appellant's action as frivolous, pursuant to 28 U. S. C. § 1915(d).

Appellant, Robert Urbano, was sentenced to life imprisonment in May 1960, following a plea of *non vult* to an indictment for murder committed during a robbery of Bamberger's Department Store in Paramus, New Jersey. Urbano is presently serving his sentence in the New Jersey State Prison at Trenton.

It appears that in September 1961, the Federal Bureau of Investigation issued a press release describing appellant's criminal career. Many newspapers and magazines proceeded to run stories about Urbano, based in whole or in part on the FBI report, and appellant responded with several law suits (of which *Urbano* v. *Fawcett Publications, Inc.*, —— F. 2d ——, (2d Cir. 1966), decided today, was one) against the authors, the publishers, and the FBI.

The present action is against the author of an article entitled, "The New-Style Bank Robber," which appeared in the December 1963 issue of Reader's Digest. Urbano alleges that the article is libelous. Appellant sought leave to proceed *in forma pauperis*, pursuant to 28 U. S. C. § 1915(a). On that application, the district court, while believing that Urbano's complaint lacked merit, permitted him to develop and expand his contentions. Voluminous briefs and appendices were submitted, and after studying them in detail, Judge Zampano concluded that the action was frivolous. He therefore dismissed the action pursuant to 28 U. S. C. § 1915(d) which provides that "the court may . . . dismiss the case . . . if satisfied that the action is frivolous. . . ."

After careful study of the entire record, we conclude that this action was properly dismissed as frivolous, both for the reasons set forth in Judge Zampano's well-reasoned decision, —— F. Supp. ——, and because it seems highly unlikely that appellant, who has adduced no specific facts tending to show that he did not commit the crimes mentioned in defendant's article, could surmount either the defense of truth, or of qualified privilege to report the activities of public officials.[1]

Affirmed.

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[1] The request of appellant for the minutes of the oral argument on the appeal has become moot in light of the submission of this appeal without argument upon the consent of the appellee. The motion is accordingly denied.

Appendix A—Opinions of Circuit Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 181—September Term, 1966.

(Submitted November 16, 1966 Decided November 29, 1966.)

Docket No. 30741

ROBERT F. URBANO,

Appellant,

v.

FAWCETT PUBLICATIONS, INC.,

Appellee.

Before:

LUMBARD, *Chief Judge,*
MEDINA and KAUFMAN, *Circuit Judges.*

Appeal from an order of the United States District Court for the District of Connecticut, Zampano, *J.*, dismissing appellant's action as frivolous, pursuant to 28 U. S. C. § 1915(d).

Affirmed.

ROBERT F. URBANO, *Pro Se.*

DEWITT, NAST & DISKIN, New York, N. Y. (Francis E. Martini, John R. Coughlin, of Counsel), *for appellee.*

Appendix A—Opinions of Circuit Court of Appeals

PER CURIAM:

This is an appeal from an order of Judge Zampano of the District of Connecticut, dismissing appellant's action as frivolous, pursuant to 28 U. S. C. § 1915(d).

This suit is against the publishers of *True* magazine, alleging that appellant was libeled by an article entitled "The Case of the Three-Faced Crook," which appeared in the January 1963 issue of *True*. The facts involved in this appeal are similar to those in *Urbano* v. *Sondern*, —— F. 2d —— (2d Cir. 1966), decided this day. We affirm for the reasons stated in that opinion.[1]

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[1] The request of appellant for the minutes of the oral argument on the appeal has become moot in light of the submission of this appeal without argument upon the consent of the appellee. The motion is accordingly denied.

APPENDIX B

Opinion of District Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. 11,145 and Civil No. 11,062

ROBERT F. URBANO,

Plaintiff,

v.

FREDERIC SONDERN, JR.,

Defendant,

and

ROBERT F. URBANO,

Plaintiff,

v.

FAWCETT PUBLICATIONS, INC.,

Defendant.

MEMORANDUM OF DECISION

Various motions [1] are before the Court in these two separate libel actions brought by a plaintiff who is serving

[1] In Civil No. 11,145

(a) Plaintiff's Motion to Strike Each and Every Defense to (sic) Defendant's Answer;

(b) Defendant's Cross Motion for Summary Judgment;

(c) Plaintiff's Applications for Appointment of Counsel and/or Guardian Ad Litem.

In Civil No. 11,062

(a) Plaintiff's Motion to Strike Special Defenses;

(b) Defendant's Motion to Dismiss Complaint.

a life sentence in the New Jersey State Prison. Since there are common facts and issues, a single memorandum of decision is dispositive of both cases.

On May 19, 1960, the plaintiff was sentenced to life imprisonment following a plea of *non vult* to an indictment for murder in the commission of a robbery. The Federal Bureau of Investigation on September 14, 1961, issued a press release purporting to describe plaintiff's career and several of the crimes attributed to him. His criminal exploits as a bank and department store robber coupled with his reputation as a "continental playboy and bon vivant" were naturally appealing subject matter for the news media. Many newspapers and magazines carried articles based in whole or in part on the F.B.I. release. Following the publications plaintiff has instituted a rash of suits throughout the country.[2]

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[2] In addition to the two suits filed here, other suits involving the plaintiff of which the Court has knowledge are:

(a) *Urbano* v. *The Federal Bureau of Investigation, J. Edgar Hoover, et al.* (D.D.C. Civil No. 616-65)—suit to enjoin the publication of allegedly false information about the plaintiff;

(b) *Urbano* v. *News Syndicate, Inc.* (S.D.N.Y. Civil No. 63-3168)—libel action based on an article published in the "Sunday News";

(c) *Urbano* v. *Liston* (D. Md. Civil No. 15092)—libel action against author of article appearing in *True* magazine, the subject of the suit in Civil No. 11,062;

(d) *Urbano v. The Reader's Digest Association, Inc.* (D.Mass. Civil No. 64-843-F)—libel action for same article as in Civil No. 11,145 here;

(e) *Urbano* v. *DeLoach* (D.D.C. Civil No. 2951-64)—action against three F.B.I. agents and medical directors of Trenton State Hospital for conspiracy to publish the F.B.I. report of September 14, 1961;

(f) *Urbano* v. *Paquette* (Province of the Seine, France)—suit for alleged conversion of personal property;

Appendix B—Opinion of District Court

The defendant in Civil No. 11,145 is the author of an article entitled "The New Style Bank Robber" which appeared in the December, 1963, issue of *Reader's Digest*. The defendant in Civil No. 11,062 published "The Case of the Three-Faced Crook" in its January, 1963, edition of *True* magazine. To the extent the former article concerns the plaintiff, it is clearly based solely on the F.B.I. report. The latter is primarily about the plaintiff; and while substantially based on the report, it is embellished with facts apparently garnered from independent sources.

In both cases the plaintiff has sought leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a).[3] Unlike the usual *pro se* complaints filed by prisoners, from the outset his presentations of claims, affidavits, and briefs

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(g) *Urbano* v. *Hughes, Governor* (D.N.J. Civil No. 262-65)—action to compel the governor of New Jersey, the Commissioner of Institutions and Agencies, et al., to furnish Urbano proper clothing for court appearances;

(h) *Urbano* v. *Calissi* (D.N.J. Civil No. 003-65)—action against prosecutor of Bergen County for denial of constitutional rights in failing to account for personal property;

(i) *Urbano* v. *Magee* (D.N.J. Civil No. 909-64)—petition for court order to compel officers of the New Jersey State Hospital to supply Urbano certain information;

(j) *In the Matter of the Application of Robert F. Urbano for a Declaratory Judgment under Rule 4:88-10* (Super. Ct. N.J., App.Div. No. AM-221-62)—suit challenging regulation governing inmate's clothing.

This list does not include the several suits in which the plaintiff has collaterally challenged the legality of his incarceration.

[3] 28 U.S.C. § 1915(a) provides:

"Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. . . ."

have been highly articulate and detailed. Nonetheless, the complaints appeared to lack merit, and the Court's initial reaction was to deny leave to proceed under this section. Rather than prematurely terminate the claims since there was a possibility, albeit a remote one, that his contentions might have some substance, the plaintiff was allowed to develop and expand them. In both cases the filing fee was waived; in Civil No. 11,062 Attorney Gordon Evans was appointed to represent the plaintiff.

The files in both matters are now voluminous;[4] this Court has a complete understanding of the claims, the background, and the defenses and is satisfied that the actions are frivolous and ought to be dismissed. 28 U.S.C. § 1915(d).[5]

The distinction between dismissal of an action under Section 1915(d) and denial of leave to proceed *in forma pauperis* under Section 1915(a) has often been recognized, e.g., *United States* v. *Radio Station WENR*, 209 F.2d 105 (7 Cir. 1953), and rests on sound policy grounds. To withhold leave to proceed *in forma pauperis* at an embryonic

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[4] Included in the file are, *inter alia*,

(a) *Pro se* briefs, and exhibits which number hundreds of pages, in addition to briefs and papers filed by Attorney Evans;

(b) Lengthy affidavits, reply affidavits and "surreply" affidavits;

(c) The F.B.I. report of September 14, 1961;

(d) Plaintiff's confessions to ten different bank robberies;

(e) Copy of Judge Galanti's Order in plaintiff's application for writ of habeas corpus finding that plaintiff was legally competent to enter his plea of *non vult*. The opinion relates the testimony of several psychiatrists which referred to plaintiff's admissions of crimes.

[5] 28 U.S.C. § 1915(d) provides in pertinent part:

"The court . . . may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

stage of the litigation would run the risk of denying a forum to worthy claims brought by sincere, but impecunious, persons. Where, as here, the litigant has been given an opportunity to amplify and clarify his claims, however, that risk is obviated and different considerations become controlling.

In *Mattheis* v. *Hoyt,* 136 F.Supp. 119 (W.D. Mich. 1955), an inmate of the state prison, serving a life sentence for murder, sued a magazine and individuals for defamation damages allegedly resulting from an article about the crime for which he was convicted. The court refused to allow the plaintiff to proceed *in forma pauperis* stating, "It is obvious that the publication of the article in question four years after plaintiff's conviction of the brutal murder of a young girl, even though it might have been in part untrue as to his admission of guilt, certainly did not affect or damage his reputation, unless possibly among his criminal associates in prison." *Id.* at 124. This Court agrees that the chances of success in a suit of this nature are virtually nonexistent, and if there were any recovery, it would be at most nominal.[6]

There being such a patent lack of merit in these suits, dismissal under Section 1915(d) is clearly proper. *Kinney* v. *Plymouth Rock Squab Co.,* 236 U. S. 43, 45 (1915). It should be noted, moreover, there has been a particular judicial reluctance to render the risk-free procedures of Section 1915 available to prison inmates in non-habeas-corpus matters. In *Mattheis* v. *Hoyt, supra,* a state prisoner

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[6] In Civil No. 11062 no demand for retraction was made until August 17, 1964. Under the applicable Connecticut statute, Conn. Gen. Stat. § 52-237 (1958), unless such a demand is made within a reasonable time, there can be no recovery for anything but special damages unless the plaintiff can prove actual malice. The demand here was not made within a reasonable time. *Hogan* v. *New York Times Co.,* 211 F. Supp. 99 (D.Conn. 1962), aff'd 313 F.2d 354 (2 Cir. 1963). In this Court's opinion it is highly unlikely that the plaintiff could prove either actual malice or special damages.

brought a libel action similar to the present one; in *Richardson* v. *Hatch,* 134 F.Supp. 110 (W.D. Mich. 1955), it was a suit for damages against the sentencing judge; in *Carey* v. *Settle,* 351 F.2d 483 (8 Cir. 1965), it was a suit against a former warden for damages resulting from the promulgation of a regulation which the applicant claimed prevented him from finishing a correspondence course; in *United States ex rel. Morris* v. *Radio Station WENR, supra,* there was a claim that the defendant warden and the defendant radio station were discriminating against petitioner by not allowing him to audition or act as an announcer on a program broadcast from the prison. The range of cases illustrates the vast potential for abuse inherent in Section 1915. Where there is no risk to be run, a variety of reasons may prompt an inmate to file suit under this section. A desire to harass officials, a hope for a quick windfall by way of nuisance settlement, or simply a discovery of a new way to pass the monotonous hours of incarceration are readily identifiable motives which alone justify careful scrutiny of prisoner complaints filed under this section. *Urbano* v. *News Syndicate, Inc.* [358], F. 2d [145] (2 Cir. 1966) (dissenting opinion—Lumbard, C.J.).

Administrative problems must also weigh in the balance. Not only does the transportation of an out of state prisoner to testify raise substantial problems of procedure, but apparently there are no federal funds available for such a purpose. *Diaz* v. *Chatterton,* 229 F. Supp. 19 (S.D. Cal. 1964). And as the Court of Appeals for this Circuit has said, "(where) the chances of success are so highly dubious . . . a judge cannot properly ask a member of the bar to assume this thankless burden." *Miller* v. *Pleasure,* 296 F.2d 283 (2 Cir. 1961).

If the suit is frivolous, and if the chances of success are highly dubious at best, the court has an interest in protecting its forum from being abused by persons who are unable to pay costs or give security therefor. *Fletcher* v. *Young,* 222 F.2d 222, 224 (4 Cir. 1955), cert. denied 350

U.S. 916 (1955). A defendant should not be put to the burden of further defending such suits after it becomes apparent that there is little, if any, likelihood of the plaintiff prevailing. Here the defendants have been subjected to substantial burden in defending these actions. Until the files were sufficiently complete to enable the Court to distinguish between the meritorious and the frivolous, this burden could not be avoided. Now the cases are in a different posture, and it would be most unfair to require any further expenditure of time, effort, and money in these frivolous and futile actions.[7]

Accordingly it is

ORDERED, that Civil Action No. 11,145 be, and the same hereby is, dismissed pursuant to 28 U.S.C. § 1915(d) and it is further

ORDERED, that Civil Action No. 11,062 be, and the same hereby is, dismissed pursuant to 28 U.S.C. § 1915(d).

The Court is appreciative of the scholarly and conscientious efforts of Attorney Evans.

Dated at New Haven, Connecticut this 27th day of June, 1966.

ROBERT C. ZAMPANO
United States District Judge

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[7] Since plaintiff has had a full opportunity to develop his claim, the case is distinguishable from *Urbano* v. *News Syndicate, Inc., supra,* which allowed plaintiff to proceed *in forma pauperis* at a much earlier stage than in the instant litigation. See also *United States* v. *Radio Station WENR, supra* at 107.

APPENDIX C

FBI "Press Release"

(PHOTOSTATS)

(See opposite ☛)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

WASHINGTON 25, D. C.

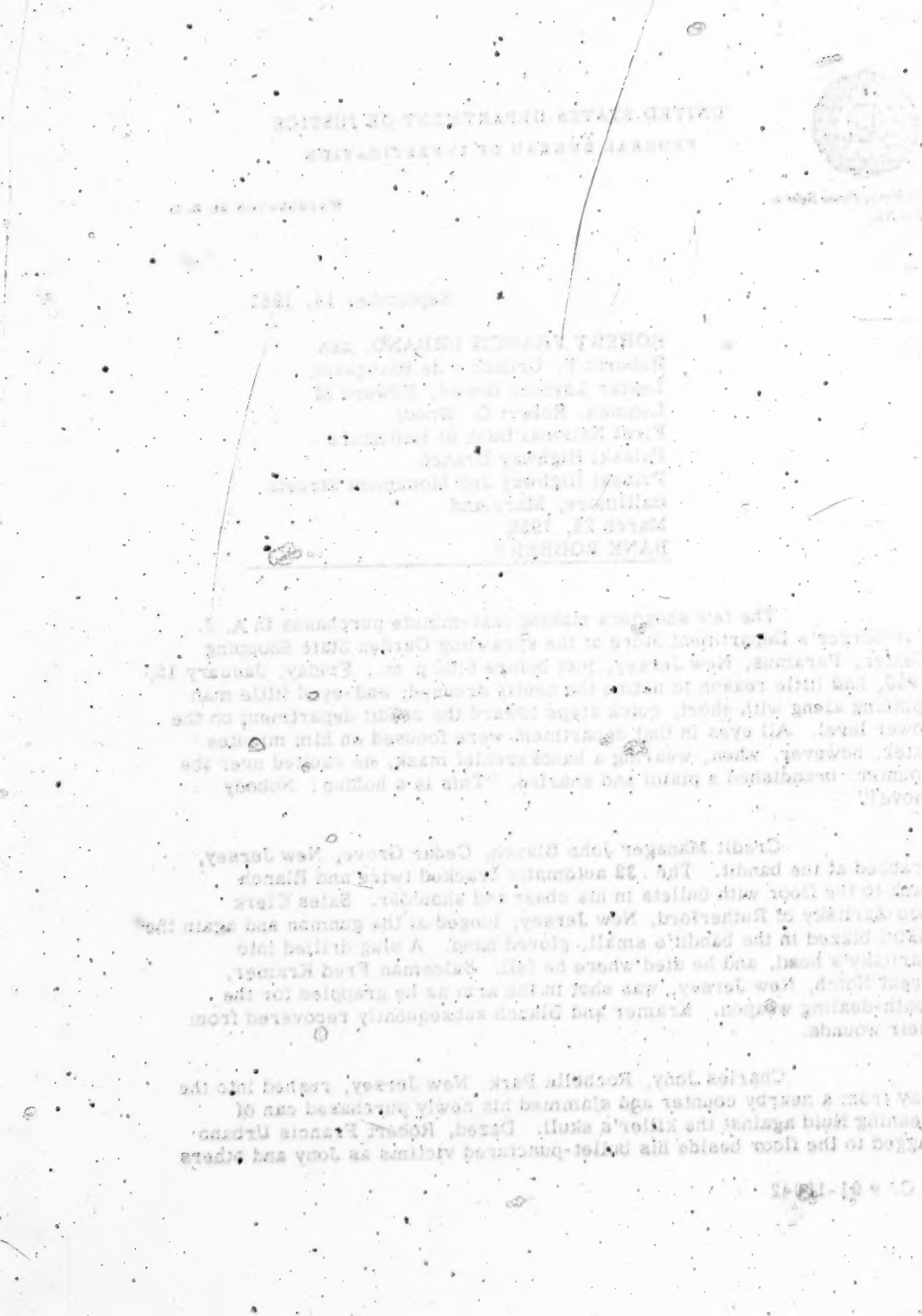
September 14, 1961

ROBERT FRANCIS URBANO, aka
Roberto F. Urbano y de Blanquart,
Lester Layman Brown, Edward M
Lehman, Robert G Wood;
First National Bank of Baltimore
Pulaski Highway Branch
Pulaski Highway and Monument Streets
Baltimore, Maryland
March 25, 1958
BANK ROBBERY

The few shoppers making last-minute purchases in A. J. Bamberger's Department Store at the sprawling Garden State Shopping Center, Paramus, New Jersey, just before 6:00 p. m., Friday, January 15, 1960, had little reason to notice the neatly dressed, sad-eyed little man mincing along with short, quick steps toward the credit department on the lower level. All eyes in that department were focused on him minutes later, however, when, wearing a handkerchief mask, he vaulted over the counter, brandished a pistol and snarled, "This is a holdup! Nobody move!"

Credit Manager John Blanch, Cedar Grove, New Jersey, grabbed at the bandit. The .32 automatic cracked twice and Blanch sank to the floor with bullets in his chest and shoulder. Sales Clerk Leo Zaritsky of Rutherford, New Jersey, lunged at the gunman and again the pistol blazed in the bandit's small, gloved hand. A slug drilled into Zaritsky's head, and he died where he fell. Salesman Fred Kramer, Great Notch, New Jersey, was shot in the arm as he grappled for the death-dealing weapon. Kramer and Blanch subsequently recovered from their wounds.

Charles Jony, Rochelle Park, New Jersey, rushed into the fray from a nearby counter and slammed his newly purchased can of cleaning fluid against the killer's skull. Dazed, Robert Francis Urbano sagged to the floor beside his bullet-punctured victims as Jony and others



overpowered and disarmed him. Minutes later, Paramus, New Jersey, police officers relieved the shoppers and Bamberger employees of their quarry and carried him off to the Bergen County Jail, Hackensack, New Jersey.

On May 17, 1960, Urbano entered a plea of "non vult" to an indictment charging him with the murder of Leo Zaritsky. Two days later, Bergen County, New Jersey, Judge Arthur J O'Dea sentenced Robert Francis Urbano to life imprisonment for that crime and terminated the illegal career of a man who had lived three lives for the greater part of a decade.

The identification of the masked Bamberger bandit as Robert Francis Urbano seemed incredible to his family and friends in Williamstown, Massachusetts. They thought that he had an excellent position in Paris, France, as a representative of an American corporation. His associates in Paris and other continental cities believed that Roberto F. Urbano y de Blanquart was the wealthy scion of an aristocratic French family and assumed that he enjoyed a substantial income from mining investments in the United States. Money seemed never to be a problem. However, about twice a year, he flew to the United States ostensibly to review his holdings and contact American bankers. It was the latter activity which made Robert Francis Urbano interesting to the Federal Bureau of Investigation.

Inquiries by the FBI revealed that Urbano was born April 12, 1922, at North Adams, Massachusetts. He was the son of a closely knit and respected family residing in Williamstown, Massachusetts. He graduated from high school and then undertook a geology major at the University of Illinois which was interrupted by a tour in the United States Air Force during World War II. Second Lieutenant Robert Francis Urbano received an honorable discharge from the United States Air Force in December, 1945, and returned to the University of Illinois where he obtained a degree in geology in 1947. That was followed by a year of post-graduate study of geology at the University of Arizona.

In December, 1948, Urbano was arrested on a charge of burglary in Phoenix, Arizona, for which he received a 5-year suspended sentence.

Urbano returned to Williamstown, Massachusetts, where he operated an antique shop and was employed by the Williamstown municipal government while maintaining contact with the State of Arizona probation officer. During this period, he continued to exhibit many personality characteristics that gave the Urbano family concern during Robert's youth. He moved about alone and was very secretive. He was

highly critical of others but readily took offense when criticism was directed toward him. He was given to temper tantrums and ungovernable rages when he could not have his way. Urbano intensely desired to make a big impression on everyone he met. He was generous with friends and relatives, often lavishing gifts and offering personal assistance in interior decorating without remuneration.

In 1954, Robert Francis Urbano went to Paris, France. Soon he wrote to inform his family that he had taken a job with a large American construction company and was residing at 27 Rue St. Ferdinand, Paris 17 e, France. Things appeared to go well for Urbano in his new employment. His family never knew exactly whom he worked for or precisely what he did. However, he had always been diffidently secretive with them.

On his semiannual visits to the United States, he occasionally brought expensive gifts for members of the family. In a few years it became obvious that Robert was becoming at least moderately wealthy from his employment abroad. He was able to indulge his interest in antiques and art, and he purchased a number of paintings by contemporary artists and various antiques as well as Dutch china and Swedish chairs. When he planed over from the continent, Robert always drove rented cars to Williamstown. After visiting friends and relatives there and in New York, he motored to the airport and flew back to Europe.

In Europe, Roberto F. Urbano y de Blanquart traveled in England, Yugoslavia, Switzerland, Italy, Greece and, of course, France. It became his custom to have an Italian bootmaker fashion fine leathers to fit his small feet in the current narrow-toe shoe styles. His tailor carefully contoured expensive suitings over Urbano's sloping shoulders so his jackets hung in the proper unwrinkled drape. Shirts, ties, and accessories were carefully chosen at the better shops and all five feet seven inches of Robert Francis Urbano turned out impeccably barbered, manicured, and attired for every occasion. His speech and manners were equally flawless although a trifle effeminate. Doormen at the best hotels and restaurants in a half dozen countries attended the parking of Urbano's white Mercedes-Benz while Urbano minced across the carpeted foyer. He casually let it be known that he was in the market for antiques, paintings, and other objets d'art. Roberto F. Urbano y de Blanquart soon gained the reputation he sought of continental playboy and bon vivant.

It was known that Urbano flew to the United States about every six months. His friends did not consider that unusual for a man of Urbano's varied interests. Understandably, he had to maintain his contacts with American bankers and businessmen. The trips must have

been successful because an acquaintance recalls that on one occasion Urbano traveled from the United States to his Swiss bank and then appeared in Paris with a two-inch stack of high denomination franc notes.

During the years that Robert Francis Urbano corresponded with the Arizona State Probation Officer he came to terms with himself. Burglary was not for him. It was in the early 1950's that he discovered that his real future was in the one-handed counter vault, pistol in hand, done to the strident cries of, "This is a stick-up--stand back, stand back," which spine-tingling exhibition never failed to command the prompt attention of all present. On January 19, 1954, the little bandit unveiled his newly acquired skill at the Founders Oxford Federal Savings and Loan Association, 5715 N. Fifth Street, Philadelphia, Pennsylvania, by vaulting the counter and taking $3,016 in cash at gunpoint. He accomplished this feat without removing his gloves and while wearing a pork-pie hat, trench coat, glasses, and a woman's scarf for a mask. The deed was headlined in Philadelphia newspapers. Many months of intensive investigation were to follow before the robber's identity was established.

On March 2, 1954, Urbano held up the Elkins Park Branch of the Cheltenham National Bank, 1919 Cheltenham Avenue, Elkins Park, Pennsylvania. He vaulted the counter and revaulted the counter from the tellers' area in a matter of seconds, some $7,248 wealthier for his two leaps. After this bank robbery, the Philadelphia newspapers were beginning to comment at length on the success of the quick-moving, sallow-faced bandit who usually wore a khaki raincoat or trench coat.

As the plane droned across the Atlantic en route to Paris, Urbano reflected on how nicely he had fared with the Pennsylvania banks and especially the Cheltenham National Bank. He suspected, however, that banks in the Philadelphia area might tighten their protective measures and bank robbery would be more hazardous there for a while. It was several months before he flew to the United States again to leap across cashiers' counters, this time to the consternation of Maryland bankers and the amazement of their customers.

In 1956, Urbano's operations began to show a clearer pattern when, on January 9, 1956, he robbed the Fidelity-Baltimore National Bank and Trust Company, Freedom Branch, 4500 Erdman Avenue, Baltimore, Maryland, of $16,853 and then six months later, on June 22, 1956, struck at the Cheltenham National Bank, Lynnewood Garden Branch, Elkins Park, Pennsylvania, where he obtained $18,203.

On January 24, 1957, he visited the North Charles Street Branch of the Fidelity-Baltimore National Bank and Trust Company and obtained a quick $4,592 by his one-handed vault. On May 29, 1957, he

briefly switched to the Pittsburgh, Pennsylvania, area where, by a few-minute stop at the Bridgeville National Bank, Cedarhurst Office, St. Clair Shopping Center, he came away with $9,520. Within two weeks he was back in his favorite bank robbery territory of Maryland, where on June 12, 1957, he picked up his largest single profit of $23,130 at the College Park, Maryland, Branch of the Suburban Trust Company. In this getaway, Urbano had to shoot into the cab of a truck which was hindering his getaway. He later boasted that he could very easily have shot either of the men in the truck but was satisfied that a shot landing in the door would stop them.

He again visited Maryland on March 28, 1958, when a stop at the First National Bank of Baltimore; Pulaski Highway Branch, netted him $18,602. On October 1, 1958, The Cheltenham National Bank was revisited with an appearance of Urbano at their Central and Laurel Avenue Office in Philadelphia, which added $17,537 to Urbano's Swiss bank account.

After busily engaging in robbing banks between 1954 and 1958, Robert Francis Urbano turned his attention to department stores and on February 11, 1959, took $7,300 in cash and $2,500 in checks from Kann's Department Store, Arlington, Virginia, which foray was immediately followed two days later by a holdup netting $7,905 from the Strawbridge and Clothier Department Store at Wilmington, Delaware. His last visit to a bank was on July 10, 1959, when at Wilmington, Delaware, he rapidly increased his financial holdings by $19,620, by robbing the Farmers Bank of the State of Delaware. In keeping with his changed pattern, first noticed by the FBI in February, 1959, this bank was located in the Wanamaker's Department Store at Wilmington, Delaware.

Between 1954 and 1959, 13 bank robberies and two department store holdups were attributed to Urbano. He signed statements admitting 10 bank robberies and the two crimes in the department stores. When asked whether he had committed three other bank robberies in which the modus operandi matched his own in almost every specific, Urbano blandly told interviewing FBI Agents that his memory was hazy as to the time and place of some of his robberies. He claimed he did not keep track of his earnings, but readily told FBI Agents that the figure of $175,000 to $200,000 "sounded about right."

Throughout this period, the Federal Bureau of Investigation was meticulously sifting every facet of the robberies. It was soon apparent that one man was responsible for the entire string of holdups. It was clear

that the robber preferred the modern suburban branch bank which customarily has the low, uncluttered customer counter separating the public from the cashiers. These the nimble bandit bounded over with no difficulty, swiftly obtained his loot, and, with another bound, was on his way out of the bank before the startled onlookers could react. Cars which had been stolen two or three days prior to the robbery were invariably found a mile or so from the bank, abandoned in a large supermarket, hospital, school, or other public parking lot. The technique of "the jumper" was clearly discernible although his true identity was not.

Robert Francis Urbano subsequently related that he invariably rented an automobile from one of the major car rental agencies and motored from New York to the city where he intended to commit a bank robbery. He usually stopped off at a good class motel or one of the better hotels in Philadelphia, Baltimore, or Washington. Thereafter, he strolled about looking for a car in apparently good operating condition. Without exception, careless automobile owners provided Urbano with a getaway car because he always found one with the keys in the ignition or the ignition in the "on" position. He simply drove it off and put it in an overnight parking area.

The next day, or several days later, he would return to the stolen car and use it to survey the bank which he contemplated robbing. On the day of the actual robbery, Urbano would leave his rented car in a large parking lot within a mile of the bank and use the stolen car to drive to and from the bank. Upon returning to the parking lot with his loot, Urbano abandoned the stolen car and drove off in the rented vehicle. To show how fast moving Urbano was, within four hours of a bank robbery in Baltimore, the rented car was being turned in to the rental agent in New York City, a distance of approximately 186 miles.

Extensive investigation both in the United States and on the Continent, as well as Urbano's subsequent admission, revealed he was on a plane winging his way back to the United Kingdom or the Continent the night of, or day after, nine of the bank robberies and within three days of the others. Thus while local police officers and FBI Agents were conducting intensive investigation in the cities where the banks or department stores were robbed, Urbano was winging his way across the Atlantic by jet to make deposits with the Swiss Bank Corporation, Geneva, Switzerland, or the Midland Bank, Pall Mall Street, London, England. He also maintained accounts in the First National City Bank, New York City, and the Williamstown National Bank, Williamstown, Massachusetts.

Urbano said that all of the guns he used during the holdups were fully loaded and he was prepared to shoot anyone who attempted to interfere,

as he so aptly demonstrated in the A. J. Bamberger Department Store robbery. He customarily purchased cheap clothing just prior to the holdup, favoring plaid shirts, chino trousers, gabardine rain hats, and trench coats. A handkerchief tied around his neck was Urbano's favorite mask.

Robert Francis Urbano related many details about some of his bank robberies which could have been known only to the perpetrator. He was subsequently viewed by witnesses to many of his robberies and was identified as the counter-leaping robber.

On May 24, 1960, Robert Francis Urbano entered New Jersey State Prison at Trenton, New Jersey, to begin his life commitment.

At this time, a warrant is filed as a detainer at New Jersey State Prison, Trenton, New Jersey, charging Robert Francis Urbano with the robbery of the Bridgeville National Bank, Cedarhurst Office, St. Clair Shopping Center, Scott Township, Pennsylvania, on May 29, 1957.

United States Attorneys in Baltimore, Maryland; Wilmington, Delaware; and Philadelphia, Pennsylvania, in September, 1960, took the necessary steps to dismiss the remaining Federal warrants outstanding for bank robbery against Urbano, commenting that since Urbano is already serving life imprisonment on first degree murder charges, additional prosecution would serve no useful purpose.

Wartime aviator, student, antique dealer, continental playboy, robber, murderer and now convict, it appears that Robert Francis Urbano is cast in his last role. It will have the longest run.

APPENDIX D

Sondern Article

(PHOTOSTATS)

(See opposite ☛)

Reader's Digest, issue of December 1963

The New-Style Bank Robber

Amateur or professional, he is a lone operator, and his favorite target is the small-town or suburban bank

By Frederic Sondern, Jr.

The stores and business places of Thornton, Texas, (pop. 504) had opened one November morning in 1960 when fire broke out in the feed and grain warehouse. As police, firemen and townspeople converged on the blaze, a well-dressed man walked into the First State Bank a few blocks away. He had just been hired by the nearby aircraft factory, he told the president, and he would like to arrange a loan on his car. The president was sympathetic. Suddenly, satisfied that neither the banker nor his wife and bookkeeper, who were peering at the excitement outside, was near an alarm button, the stranger drew a gun. Unhurriedly he made the bookkeeper hand over the cash in the tills, herded all of them into the vault, locked it and departed as quietly as he had come.

Violations of the Federal Bank Robbery Statute, which during the late 1940's dwindled to an average of about 200 violations a year in this country, are once again on the rise. Last year 1250 were reported to the FBI for investigation, topping the 1961 record by a third; 1963 promises to be worse. In his annual report to the Attorney General, J. Edgar Hoover, Director of the Federal

D-1

Bureau of Investigation, wrote: "Armed assaults on banking institutions continue to be among the most serious crimes under the jurisdiction of the FBI."

Fortunately, the FBI record for speedy catches is high by police standards: many bank robberies are solved within a matter of hours, with recovery of substantially all the loot. In the Thornton case, the FBI's Houston office assigned all available special agents in the area and the endlessly patient work of these highly trained men began.

The catching of Lawrence C. Pope, who had set fire to the feed store as a diversionary measure, was not easy. He is an intelligent man, had worked in banks from boyhood, had even been a bank examiner for a while, and finally president of a small but prosperous Texas institution. Reportedly, a disagreement with its board of directors had lost him his job. Bank robbery seemed to him the only way to recoup.

This sort of robber has no underworld connections, so informers were useless. But Pope had underrated the FBI's ability to put together the flimsiest of leads. His victims described him clearly. The Bureau, which uses newspaper, radio and television publicity to great effect, promptly broadcast his description. As agents checked out reports coming in from filling stations, motels, diners, Pope's *modus operandi* and direction of travel were established. Then came the break (though not before he had robbed another bank of $16,000). An alert operator of a motel on the outskirts of San Antonio phoned the local FBI. The arsonist-brigand was proudly inspecting a European car he had bought, when police closed in on him. He is now serving 25 years in a federal penitentiary.

The business of robbing a bank has changed radically in the last decade. It is far less often an organized gang operation than it was in the days of Dillinger and Legs Diamond. The big-league hoodlums know that tangling with the FBI (which under various federal statutes protects almost all of our banks) is not worthwhile. But the new lone operators—both amateur and professional—are far more numerous, if less pretentious, than their submachine-gun-carrying predecessors.

An analysis of 150 recent cases in the FBI *Law Enforcement Bulletin*, a police officer's handbook, describes the average bank robber as a lone male from 17 to 50 years old. Generally operating on Monday or Friday between one and three p.m., he approaches a teller, demands money, threatens him with a handgun, and "88 percent of the time obtains loot which averages $6998 per robbery." Small-town and suburban banks are the main targets, California, New York and Ohio the main sufferers. But the madness seems to be spreading in other states.

Consider the case of the remarkable Robert Francis Urbano. Son of a respected family in a small Massachusetts town, university graduate,

pgs. 35+36 are cold

honorably discharged Air Force officer, widely traveled antique dealer, he provided the FBI with a complicated dossier.

One March day in 1954 an immaculately dressed little man minced up to the tellers' counter in a Pennsylvania bank. Drawing a scarf over his nose, he deftly vaulted the counter with gun in hand. "This is a stickup," he shrieked in a high-pitched voice. "Stand back from your buttons." The tellers stood back. Watching them for any movement, the bandit swiftly opened cash drawers and shoved bundles of notes into his pockets. Within minutes he leaped again and was gone. A few hours later, having collected over $10,000 from this and a previous robbery, he was on a plane to Paris.

Inventing the romantic alias of Roberto Urbano y de Blanquart, Urbano posed skillfully as the scion of a wealthy noble family and began putting down roots in France, England and Switzerland. In Europe he behaved himself perfectly, traded innocently in antiques and lived pleasantly. But about every six months—for over five years—he would make a quick visit to the United States. (He used to explain to his friends abroad that he had business with his American bankers.) His admitted ten bank and two department-store robberies netted him some $200,000. After each robbery he would board a plane bound for his bank in Switzerland, and thence to his cheerful apartment in the Rue St. Ferdinand in Paris.

Urbano-Blanquart became a major FBI headache. He moved so quickly in a robbery that he left little personal impression. He was always masked and always in different attire. Sometimes he was shoddy, sometimes elegant. A dirty workman's cap, a stylish Homburg and porkpie, wrinkled blue jeans and well-cut London suits were all part of his wardrobe. He was an identification officer's nightmare. Always gloved, he never left fingerprints. The FBI deduced from the invariable method of operation that one man was responsible for the raids. But there were no other leads.

Urbano-Blanquart might have gone on quite a while but for an accident in a Paramus, N.J., department store. At the credit counter of Bamberger's, which he vaulted as usual, three courageous employes grabbed for him despite the threatening gun. One was killed instantly, the other two seriously wounded. Then a customer—Charles Jony of Rochelle Park—walked quietly up behind the gunman and brought a can of newly purchased cleaning fluid down on his head. Urbano-Blanquart is now in the New Jersey State Prison at Trenton for life.

The Frank Sprenz case caused the FBI even more trouble. On a quiet morning a young man looking like a college student came into the Plaza Branch of the First National Bank of Hamilton, Ohio. He produced a paper bag and a revolver. "All right," he said. "No alarm,

please. Someone might get hurt." The tellers backed away; both the man and the snub-nosed .38 looked businesslike. Drawers were opened and the sack filled. "Exhibiting coolness and courtesy," says the FBI account, "and voicing his appreciation, he quickly departed with $25,955.20 of the bank's money."

In a stolen car which he had parked nearby he drove to the local airport. Browsing around the apron, he found a small plane with the ignition key in the lock. A few hours later he landed several hundred miles away, hired a car and was off again, to rocket up and down and across the continent. In one year he had traveled an estimated 25,000 miles, stolen 29 automobiles and three aircraft.

Catching a criminal of this kind entails a lot of police work. The description of the Hamilton bank robber reminded an officer in the FBI's Identification Section of a Frank Sprenz of Akron, Ohio, who, awaiting trial for armed robbery, had broken jail and disappeared.

The more special agents discovered about Sprenz from his relatives and acquaintances in Akron, the more certain they were that he was the Hamilton bank robber. They learned that he was an enthusiastic flier and that he had a peculiar vanity. Almost bald, he wore a toupee and usually a hat even when swimming—a sport he enjoyed. These facts went into an FBI "Wanted" flier sent not only to police departments, but to YMCA's, toupee sellers, used-car dealers and airports all over the United States —and to Canadian and Mexican officials.

This sort of carefully contrived FBI web is almost impossible to escape. Sprenz, knowing that he was on the Ten Most Wanted Fugitives list, managed to make his way to the island of Cozumel off the southeastern coast of Mexico. He thought he was safe and had settled in a pleasant thatched cabin on the beach. But while he was strolling one day a car screeched to a halt beside him. Two Mexican police officers had recognized him. Sprenz is now serving a 25-year federal sentence.

To combat the growing bank-robbery menace, FBI Director Hoover is conducting a campaign with banks and local police forces stressing *prevention*. During the last year, teams of FBI experts have been organizing meetings of principal bankers in states most affected by this peculiar crime wave. At Bear Mountain, N.Y., recently, 300 bank executives from New York City and its suburbs came to hear what the FBI had to say. They watched a film taken by one of the new hidden cameras (which many banks are now using) of an actual holdup. A teller had tripped the button that started the camera. The film had enabled police to arrest the two robbers within a few hours.

The bankers were also shown an FBI pamphlet entitled "How Banks Can Help the FBI." This lists im-

D-4

portant pointers for discouraging bank robbers: properly trained guards, an efficient alarm system connected with local police headquarters, education of tellers to know exactly what to do. Most important is to make a detailed mental picture of the robber, noting height, clothing, weapon, speech, etc.

The FBI has also devised a series of shrewd tactical devices to help banks protect themselves. One, for example, is a "bank-opening procedure." Several employes arrange to arrive for work at the same time. One goes in and searches. If all is well, he makes a signal visible to those outside. This may be the removal of the cover of a certain typewriter. The employes outside, meanwhile, have observed any cars at nearby curbs. The details of the procedure, at FBI insistence, are frequently changed.

The FBI has developed other rules which more and more banks are following: delivery of payrolls, for example, at varying hours; a minimum of cash kept in each teller's drawer. A number of bills listed by denomination and serial number and kept in a teller's drawer have often been of great aid to police in tracing the criminal. Bank employes are trained, in case of a holdup, to cordon off the area of attack afterward so that possible fingerprints left by the bandit will not be erased. Other techniques and systems cannot be disclosed, but life for the bank robber is becoming harder.

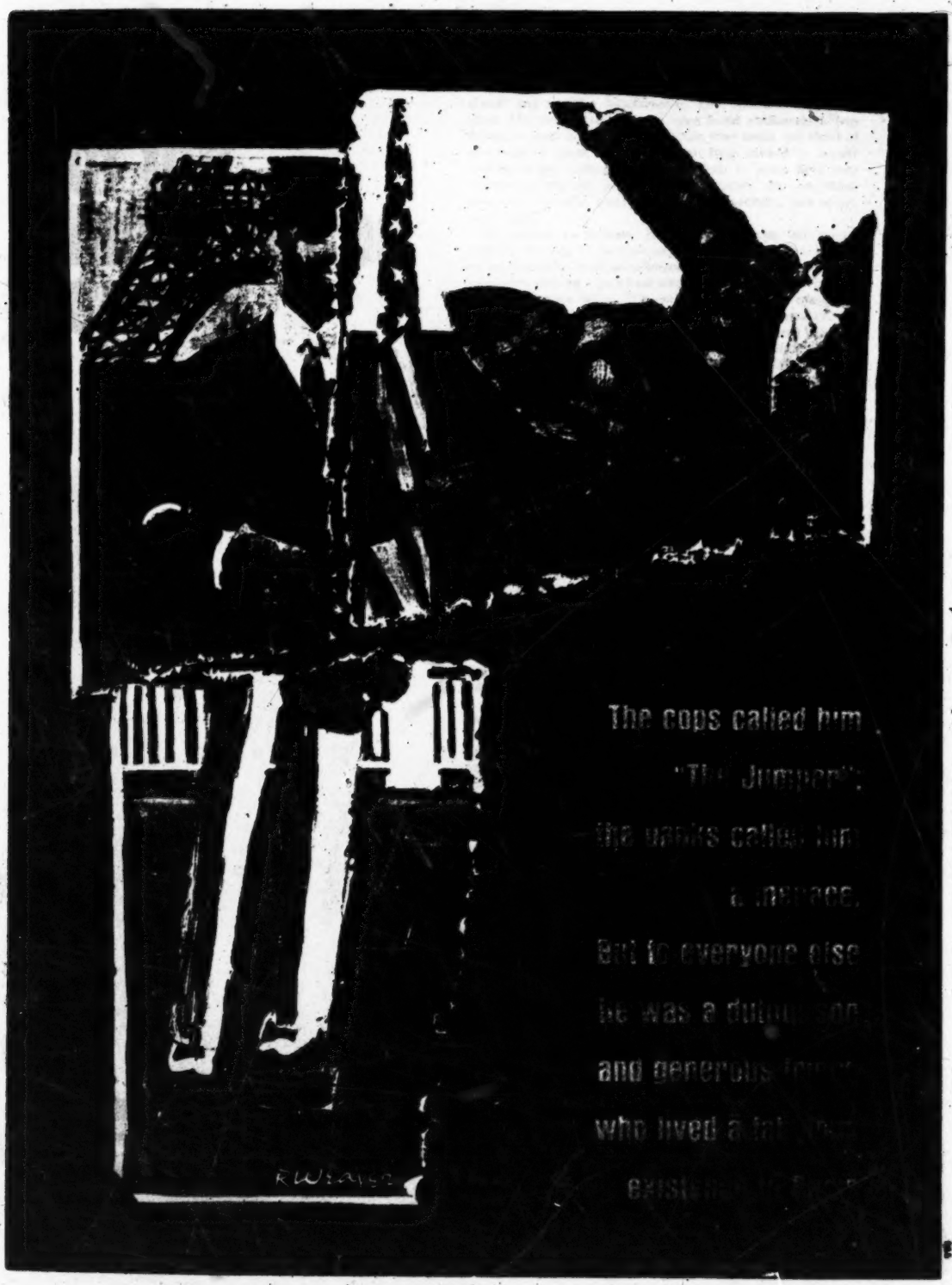
D-5

APPENDIX E

Fawcett Article

(PHOTOSTATS)

(See opposite ☛)


The cops called him
"The Jumper";
the banks called him
a menace.
But to everyone else
he was a dutiful son
and generous friend
who lived a full
existence

the case of the three-faced crook

By ROBERT LISTON

ILLUSTRATED BY ROBERT WEAVER

■ He wanted to stun, to surprise, to paralyze. To tellers in a bank he was an apparition, faceless behind a hat, sunglasses and a white handkerchief, that suddenly leaped at them. He vaulted the counter, gun hand outstretched, legs flying, to land in their midst. While they stood too shocked to scream or speak or move, he ran from drawer to drawer stuffing money into a paper bag. Then he went back over the counter and out the door. "The Jumper," the most fabulous and successful bank robber of this century, had struck once again.

He wanted to impress. He traveled Europe like minor nobility, visiting his bankers in Geneva and London, calling on art dealers or antique collectors, palavering in any of four languages, making a purchase when his keen eye spotted fresh talent or future value. His suits were fitted by the finest London tailors, his shoes by the best Italian bootmakers. In Paris, where he lived, he drove a white Mercedes-Benz between his apartment at 27 Rue St. Ferdinand and Maxim's, the Lido, the opera and the most exclusive restaurants and clubs.

He wanted to be liked. In Williamstown, Massachusetts, he appeared in a rented car filled with china, vases, paintings, furniture and laces for his mother and sister, both of whom he adored. To stenographers and secretaries in the Town Office, where he had worked as a minor official, he took perfume and candy. He called upon friends, making them small loans, listening to their problems. He spent a small fortune renovating his parents' home and used it to entertain friends, all of whom thought him marvelous.

Each man so described is Robert Francis Urbano, perhaps the most devilishly clever and most paradoxical criminal of this generation. In less than a decade—although no one is quite sure when he started his crime spree—he robbed at least 15 banks and three department stores—no one, again, is sure just how many—of perhaps a quarter-million dollars. None can swear it wasn't a great deal more, least of all Urbano himself. He murdered a man and crippled another for life, but in such regard do his friends hold him that few will speak critically of him. And they can't quite surrender the notion that his isn't a colossal case of mistaken identity.

In Paris, his concierge, who prides herself on knowing and respecting the secrets of her tenants, was dumbfounded to learn the courtly and cultured young man had a penchant for robbing banks. In a small town in Arizona, a physician took pen in hand and wrote a rebuking letter suggesting first a punch in the nose, then a libel suit were in order for anyone writing anything derogatory about Urbano.

Yet in New Jersey a veteran police officer declares, "He is the most arrogant, remorseless and intellectually supercilious bastard I have ever known. You just want to slug him." And the prosecutor for Bergen County, New Jersey, admits, "He is the most unusual criminal who ever entered this office." The FBI, which spent most of a futile decade hunting him, says with some admiration that Urbano "makes most hardened bank robbers of the past shape up as amateurs."

His technique was pure genius. His skein of robberies might well have gone on forever, except for the unpredictableness of females. In a rented car he would leisurely motor to Philadelphia or Baltimore or Washington, even once to Pittsburgh, and check into a fashionable motel. Then he would go for a stroll, ostensibly to see the sights, but actually to locate a car with the keys in the ignition. Finding a serviceable model, he would remove it to a public parking lot, locking it so no one else would steal it. Afterward he'd taxi back to the motel.

For the next several days he'd drive around town in his rented car, looking for a bank in need of a robbery. His standards were not high. All he asked [*Continued on page 92*]

The Case of the Three-Faced Crook

(Continued from page 35)

was that it be a modern, somewhat isolated branch bank, built with a low counter.

Next he would visit various shops to purchase his disguise. This was necessary, for Urbano had a rather unforgettable face. His complexion was pasty and pock-marked, his nose prominent, at least until he had it trimmed by a plastic surgeon. But what everyone noticed were his eyes. They bugged out, like a frog's. He was short—only five-feet-seven—and wiry, and walked with agile grace. He took small steps on the balls of his feet.

On the day of the robbery, he would check out of the motel and drive to the lot containing the stolen car. He switched to it and drove to the bank, arriving just before closing time. On went the coat, glasses, hat and gloves. The handkerchief was tied around his neck. He double-parked in front of the bank—a violation which did not overly concern him—and went inside, pulling up the handkerchief as he crossed the doorsill.

At that point he became a kangaroo with a hotfoot. He'd bound across the foyer and over the counter, motioning stunned employees and customers back against the wall with his gun. Then, without saying a word, he went straight to his work, scooping money from cash drawers, tables and wherever else it lay. He was not greedy. He ignored coins and dollar bills. Never once did he make an overture at a safe. Speed was everything. He had to get done and get out before anyone came to his senses and tried to grab him.

The money bagged, he went back over the counter, jogged out the door, and roared away in the stolen car.

Police and FBI agents usually sirened in within minutes. They would scour the area for the car. They interviewed victims. A quick description of The Jumper would be radioed to every car in the city. Suspects were rounded up. It would be, in fact, a bad day to be wearing a trench coat and carrying a paper bag in the area. Newspapers dispatched reporters and photographers. Radio and television stations interrupted lucrative programs for news bulletins. Bank officials blanched from the bad publicity. Insurance men sighed.

And where was Urbano? He had entered another world. He switched from the stolen to the rented car, drove leisurely to New York, and hopped a plane for Paris, where he became Robert F. Urbano y de Blanquart, continental *bon vivant*.

In a way, he acted strangely in Paris—for a bank robber. He blew the money, of course, but not intemperately. He never was an excessive drinker. He had no expensive coterie of flossy dames. Gambling was not a particular vice of his. He was, rather, a man of culture, impeccable taste, rare elegance and intellectual and artistic accomplishment. After all, didn't he have a M.A.? Hadn't he co-authored a zoological paper? Didn't he know art and antiques? He was no dilettante, no Bohemian, beatnik or exhibitionist. He was a man of distinction.

He lived in Paris as a member of the *gens aises*—people of ease, those who do not have to struggle to make a living. He resided a few blocks from the Arc de Triomphe and the Champs Elysées in a quiet street of apartment houses and small service shops. His apartment was quite modern, more American than French. He paid $175 a month rent. Inside, he crammed the walls with his classical record collection and his books. He did his own housekeeping and cooking, at which he was excellent.

To explain his apparently inexhaustible supply of money, he said he was the son of a wealthy American industrialist who was in the art and antique business. He scoured the Continent for bronzes, Dutch Chippendale, Swedish chairs and various forms of art. He had regular dealings with collectors all over Europe and may even have made a few bucks at his trading.

Each morning he arose at 8 and dressed impeccably but somberly, as all true French gentlemen do. Into his silk drawers, monogrammed shirts and wool suits had gone real quality; they were the finest money could buy. On his way out of the building he would chat for a moment with the concierge or her husband, or with a neighbor or friend he chanced to meet. He would bow and doff his hat. He smiled, inquired about their health and disposition, lingering just long enough. This was a courteous, urbane man, this Urbano y de Blanquart. He was never riled or moody, always even-tempered, polite, thoughtful and generous to the tips of his manicured nails.

And so orderly. He always had breakfast in the same shop, sitting at one of three tables to sip his *café* and eat his *croissant*. Of course, he traveled a good bit, through Yugoslavia, Italy and Greece, returning each time burdened with *objets d'art*. In Switzerland he holidayed and visited his bankers. In London he visited his other banker and his tailor and his art dealer, and enjoyed more days of ease.

In all of these places he had important friends, who introduced him to other important people, all of whom were uniformly impressed by this fellow Urbano.

He was known at the swankiest places, for there is nothing like a big tip to make a headwaiter remember a face. When in Paris he entertained royally for both Americans living in Paris and friends visiting from the States. One of these, an attractive buyer for a New York firm, has told of rivers of wine at his parties, elegance without parallel, gifts, connections made with the right people. A simply marvelous man, this Urbano.

So it was easy to see why his friends missed him so on his semi-annual visits to the United States to "confer" with his bankers.

In New York, he checked into an apartment he shared on East 62nd Street, and spent a few days there renewing friendships. Then he rented a car and headed for Williamstown and still another world. He arrived like the Magi bearing gifts.

Shortly after Urbano first went to Paris, his parents purchased a large mansion on Glen Street, which had been owned formerly by the elder Urbano's employer, an automobile dealer. Under the expert supervision of Bob Urbano, on one of his return visits, the mansion was extensively remodeled and redecorated. The stairway was changed and a modern fireplace put in. Everyone said it looked wonderful. Bob Urbano was so talented.

Into this house he brought some of the finest and most valuable antiques to be found, all gifts to his mother. His sister, whom he adored, suddenly had a riding horse and a fine saddle and habit, and, a new piano, and myriad items a beloved older brother could bring from Paris. There were gifts for his father and brother, but his relationship with them was never quite so close as with his mother and sister.

The arrival of Urbano in Williamstown never went unnoticed. He was the local boy who'd made good. Everyone knew his history. He'd grown up a member of a handsome and respected family in this town of 6,000, the home of Williams College. He'd dated the "nice girls" of the town, although he'd never quite selected one as a bride. He'd gone off to the University of Illinois, served with distinction in the war as a navigator-bombardier, then returned to college, graduating as a geologist. He'd worked in the mine fields of the Southwest while obtaining his master's degree from the University of Arizona, and after returning to Williamstown, opened a small antique shop, and worked as a minor town official. He'd even run for elective office. Perhaps it was just as well he'd lost, for that left him free to take that remarkable job in Paris.

He certainly had improved himself there. He'd started abroad as a geologist employed in the construction of air bases in Europe. Then he'd become a purchaser of steel for air bases. That certainly must pay well, for he was thinking of opening an art and antique gallery in New York. My! He certainly was successful, and such a nice man. He always remembered to bring a gift for his friends, and he'd do anything for you. He always remembered birthdays and anniversaries. And wasn't he romantic, with his Continental manners and dress? All Williamstown was enraptured by him.

But for Urbano there came a time on each visit to the States when he was forced to confer with his bankers. All this high living and gift buying required a good bit of financing.

Confer he did. He hit the Cheltenham bank of Philadelphia and its branches four times for a total of $52,000. He got over $21,000 from the Fidelity-Baltimore National Bank in Baltimore in two cracks. He hit the First National Bank of Baltimore for $18,000, the Farmers Bank of Delaware for $19,000 and the Suburban Trust Co. in College Park, Maryland, outside Washington, for $23,000. This is nothing like a complete list.

FBI agents experienced a futility they have known few times. They couldn't get close to him. They knew the same man did all the jobs. They had his technique analyzed down to the most minute gesture in hopes of finding a clue to his identity. But several factors made it difficult to nab him. He struck at random and at well-spaced intervals. It was hard to figure where or when the next robbery might occur. The money never turned up in this country. And Urbano's act was a single. He had no accomplices to talk or act suspiciously.

But the principal reason Urbano was not caught by the FBI was that he did not think, act or live like a bank robber. He spent virtually all his time in two other worlds to which The Jumper was as foreign as a Zulu headhunter. An international art dealer does not broadcast that he is a bank robber. Nor does a loving son tell his mother the gifts he showered on her were bought with other people's life savings. He alone knew he was The Jumper. It was his terrible secret, for the thought of being caught and exposed to his family and friends panicked him. Every job was to be his last. But he was trapped. He had to act out his expensive roles and there was no way to earn honestly the kind of money he needed.

How had Urbano, with his brains, upbringing, education and environment, got into this predicament? He had been a "different" boy with a near-genius intelligence rating and a flair for language, art, and interior decoration. He was moody, secretive and a distinct loner in his activities. He was highly critical of others, yet given to temper tantrums and ungovernable rages when criticized himself. The whopping lie was one of his exceptional talents, and he derived great pleasure when people believed him.

To the townspeople he was that intelligent, well-mannered Urbano boy of whom expectations were great. To his family, he was a very good, if difficult, son. To himself, he was lonely, misunderstood and rejected, a state of mind he readily improved by accepting his own superiority to people around him. His friends in school, the townspeople, his own father were just average at best, while he, Robert Francis Urbano, was destined for great accomplishments. He dreamed of wealth and position, of important and celebrated friends, of affluence and a whole way of life that would make his name a household word. No longer would he be rejected. He began secretly to lead this life at an early age, but when you live in Williamstown and your father is service manager in an automobile garage, you have to live your destiny mostly in your dreams.

Then young Urbano had an experience in World War II which honed the dream to a fine edge. First he served—as he later told it—in the flight crew of Lt. Col. James Stewart, the actor. This was the sort of company he was meant to keep. After 26 combat missions he went to Paris on leave. The dream turned into a full-fledged rhapsody. The city on the Seine became his month of Sundays. The flowers, the girls, the Louvre, the sidewalk cafés, the Pernod saucers stacked

"How stupid can you get? When I was a kid I never showed a report card like this to my father when *he* was in a nasty mood."

before him, the atmosphere of love and adventure and excitement became not just his cup of tea, but the whole bloomin' pot. Urbano was hooked. He was "mainlining" his own dream. Coming back to the States, he dedicated his whole life to an effort to live the dream.

The prestige of an advanced degree he thought would help speed up attainment of the dream. It didn't help enough. So, while working in Arizona, he tried burglary but he was caught immediately and handed a five-year suspended sentence. The Arizona probation department allowed him to return to Williamstown. No one knows when the idea of bank robbery first occurred to him, or what led him to develop his unparalleled technique, or, for that matter, where he first used it. The FBI says rather vaguely, "the early 1950's." The first bank job firmly attributed to Urbano is the January 19, 1954 robbery of the Founders Oxford Federal Savings and Loan Association in Philadelphia. This netted $3,016. On March 2 of that year he vaulted the counter in the Cheltenham National Bank branch in Elkins Park, Pennsylvania, and revaulted back $7,248 richer.

It was shortly thereafter that Urbano left for Paris to start turning the dream into reality.

From then on he returned to the United States no oftener than his finances demanded. For years he used his bank robbery technique, almost without variance, to provide the funds for his dream. Only once did he come close to being caught. That was at the Suburban Trust Co., the College Park job. He had trouble almost from the start. He failed, in the beginning, to vault the counter—he had to resort to a cigarette-butt receptacle as a step. His grand entrance was marred, and that unnerved him a little. Next, one of the cash drawers was locked. Then he dropped $2,000 on the floor. Finally, bank manager William R. Reading made a move, and Urbano had to threaten him with a pistol. Too much was going wrong. On the edge of panic, he decided to scoot, even though three cash drawers were untouched. But as he ran out the door, Reading ran after him, hollering, "Stop that man! Stop him!"

The cries were heard by William Shipley, a truck driver in the purchasing department of the University of Maryland, which is located at College Park. Shipley had with him two trusties from the Maryland House of Correction.

Shipley figured the getaway car would come down Guilford Drive into Washington Boulevard, as U. S. 1 is called in College Park. He raced to the intersection, arriving just as Urbano got there in his two-tone sedan. The truck and the car raced side by side for a moment, with Shipley trying to force Urbano off the road.

Then Urbano pointed his .45 automatic out the window. A crack shot, he drew a bead on Shipley's head. The truck driver saw the gun clearly aimed at him. Deliberately, Urbano lowered his aim and pulled the trigger. The slug slammed into the door of the truck cab. Shipley hit the brake. The inmates hit the floor, hoping to live to serve another term. Urbano drove on, switched cars, and continued to New York shaking like a leaf. Shipley, almost a hero, told the FBI, "He could have killed me, had he wanted to."

Not long afterwards, Urbano altered

his technique by switching to department stores: He figured them a soft touch. They had lots of money and crowds of people to lose himself in. So, on February 11, 1959, he tried Kann's Department Store in Arlington, Virginia. He used the same over-the-counter method. It worked. He bounded away with $7,300 in cash and $2,500 in checks. Two days later he performed the same stunt at the Strawbridge and Clothier Department Store in Wilmington, Delaware, netting $7,905.

In funds again, he was off to the good life for a few months. But the following July he returned, to pull the Farmers Bank job in Wilmington. The FBI observed later that the bank was located in Wanamaker's Department Store, and the inference was that Urbano had considered both before making his choice.

Urbano spent the rest of the summer and fall in Europe, having a particularly good time. It was just as well. It was his last fling, the final dream sequence before the rude awakening.

He came back to the States on December 11, 1959, stayed in New York at the East 62nd Street apartment, then went to Williamstown for the holidays, loaded with gifts as usual. After Christmas, he returned to New York, spent a few days there, and once more headed for Massachusetts, by train. He left Williamstown for the final time on January 11, 1960, and went to the Hertz office in New York City to rent a red 1960 Ford station wagon.

On the morning of the 12th he drove across the George Washington Bridge to Patterson, New Jersey, and parked the wagon at the Bergen Mall shopping center. Then he took a bus to the outskirts of Patterson and found a four-door, black and white sedan with the keys in it. This he drove to neighboring Maywood and parked it in a lot. That night he came back to New York in the red station wagon. On Wednesday and Thursday he returned to New Jersey, driving and walking around, acquainting himself with the teeming suburbia which is Bergen County, and in particular with its more prosperous business enterprises.

On Friday, January 15, he arose at 8 as usual and drove the wagon to the Bergen Mall. He took a bus to Maywood and picked up the stolen sedan. He spent the whole day going back and forth between Stern's Department Store in the Bergen Mall and Bamberger's Department Store in the huge Garden State Plaza shopping center at Paramus. Both stores he cased thoroughly, mulling over which one, or neither, to hit. At 4:30 that afternoon he made up his mind. Bamberger's.

Starting at 4:30, he walked around the shopping center and the store. Three, four, five times he made the rounds, noting exits and stairways, who worked where, and especially the location of the men's room—for it was his plan to run into the lavatory, whip off his mask and trench coat, and reappear as a well-dressed shopper from New York, properly shocked at the terrible robbery which had just occurred.

About 5:30 he sat down in a chair and tried to think. Should he go ahead with it or not? He had an uneasy feeling. This was a big store in a sprawling shopping area. The cashier's cage was located near the center of the lower level. If anything went wrong, he'd have a long run up and out to the parking lot. On the other hand, the store was rapidly emptying of customers, and most of the clerks were going to dinner. Besides, he needed money desperately. After buying a plane ticket on a Pan American flight to Paris, he was down to $11.65. He felt he couldn't delay. At 10 minutes to 6 he put on his sunglasses and began to walk towards the credit counter.

Minutes earlier, John Blanch, the credit manager, had left the counter to go to dinner, a fact Urbano had noted. That meant only three women clerks remained in attendance. But Blanch didn't leave the floor just yet. He went to the men's room, washed his hands and combed his hair. In the mirror he saw that the carnation in his lapel had wilted. He returned to his office to get a fresh one.

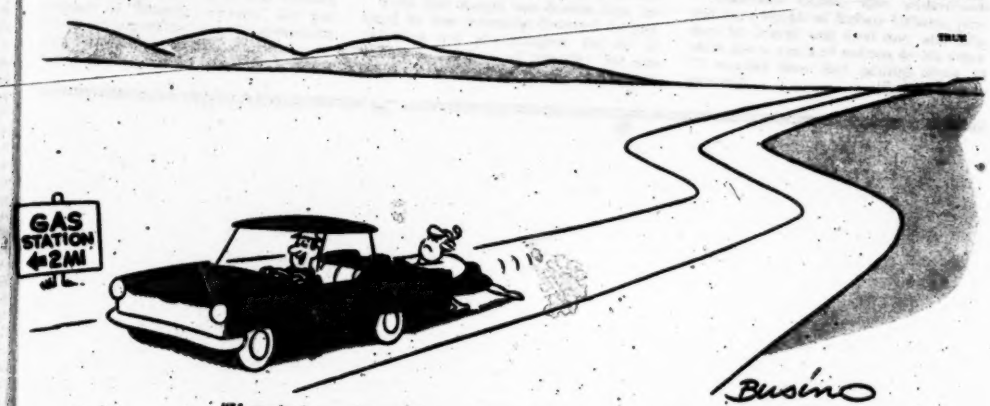
As Urbano, wearing his trench coat, with a brown fedora pulled low over his eyes, was approaching the counter and preparing to pull up his handkerchief mask, Leo Zaritsky, a furniture salesman, was sitting at a desk 20 feet away doing his paper work. A hundred feet farther along in the furniture department, Fred Kramer was filing his sales slips. Charles Allison was checking stock in the toy department. And in housewares, Charles Jony of New Rochelle, New Jersey, was buying a half-gallon can of rug cleaner under his wife's watchful eyes.

Behind the counter, Dira Mullin of Saddle Brook and Agnes Reynolds of Paramus felt someone approaching. They looked up and saw what could have been an apparition. Their mouths fell open as Urbano stood there facing them. Suddenly he jumped over the counter right in front of them. Dira Mullin was petrified with fright.

At that precise point there happened what had not occurred in all Urbano's previous robberies. Someone wasn't stunned to silence. Someone screamed. Agnes Reynolds opened her mouth and curdled the air with high-pitched decibels of sound, and she kept it open and she kept on screaming. Urbano froze.

In his office John Blanch heard the screams. He rushed to the door and saw Dira Mullin with a horrified expression on her face and Agnes Reynolds screaming her head off. He did not see Urbano at first. He thought someone had fainted. He rushed into the counter area, then caught sight of a man with a handkerchief over his face and a bag in his hand. The man seemed to be stuffing something into the bag. Blanch saw no gun. He heard no words spoken. He had, in fact, no notion, in that instant, of what the intruder was doing. But he didn't belong behind the counter. That much was certain. Blanch jumped him. They grappled, each trying to push the other to the floor, and suddenly there was a gun in the open. Blanch grabbed for it.

At his desk a few feet away, Leo Zaritsky heard Agnes Reynolds' screams and rushed toward the sound. He saw Blanch struggling with a man and lunged in to help. The automatic in Urbano's hand cracked. Zaritsky fell with a .32 bullet through his skull and died where he lay. Fred Kramer also heard the screams



"If you had your driver's license, I could let you steer part of the time."

and rushed in. He cocked his arm and aimed a punch at Urbano. The blow missed. Urbano's bullet didn't. It smacked into Kramer's arm, splintering the bone, and he fell atop the dead Zaritsky. Kramer would spend 10 weeks in a hospital and be crippled for life.

Blanch, meanwhile, continued to struggle desperately to get the gun. But Urbano's finger kept closing on the trigger. One bullet sliced Blanch's arm, chest and shoulder. Another grazed his scalp. He fell to the floor, stunned. At that moment Charles Allison, who had been holding back, saw his chance and moved in. He grabbed Urbano from behind, trying to pin his arms down. As they struggled, Blanch got up off the floor and looked wildly for something to hit Urbano with. He snatched up an electric clock, but the cord wouldn't let go. Then he jerked a check-writing machine off a table, but with his wounded arm he couldn't swing it enough to do any damage.

Meanwhile, Charles Jony heard the gunshots. He hesitated a moment. His wife said, "Those darn kids with their cap guns." Jony knew better. He raced for the cashier's cage, still carrying his half-gallon can of rug shampoo. He decorated Urbano's skull with it. The Jumper fell beside his victims.

A dream that had been lived on the banks of the Seine and under the magnificent maples of Williamstown died in a New Jersey department store, slain with a can of cleaning fluid.

But Urbano still fought to save the dream. The first story he gave Sergeant (now Captain) John P. Nicolas of the Paramus police was that he was Edward Lehman of Phoenix, Arizona. He was totally uncooperative and uncommunicative. Nicolas had no idea, at first, that he had The Jumper in a cell. Urbano let it be known that he considered Nicolas and the other cops so inferior as to be unworthy of his attention. They were, in his opinion, slobs. And he had not one shred of remorse about killing Zaritsky and wounding Kramer and Blanch.

"They shouldn't have jumped me," he said. "I had to defend myself. I had a gun. Only an idiot, would think I wouldn't use it."

The third day after Urbano's arrest, Guy W. Calisi, Bergen County prosecuting attorney, and his first assistant, Fred Galda, got him to talk—but only about the Bamberger robbery. The FBI, attracted by the *modus operandi* of the store job, entered the case. They were sure The Jumper had been caught at last. He told them nothing.

But Urbano, while still remorseless and arrogant and terribly bitter about what had happened to him, was nevertheless filled with shame. He was exposed to his family and friends. All the lies, the sham, the phony masquerade as a man of means and culture had tumbled around him. Who would believe now that he had really thought of himself as a rich man, that he legitimately knew art, that he genuinely wanted to be kind and thoughtful and generous, that he was, deep down, the man he pretended to be and not this creature groveling in a cell?

He tried desperately to protect his family and friends. He didn't want them informed of his arrest. He refused to see or talk to them. His parents wanted to mortgage their home to hire attorneys. Urbano refused any defense. When counsel was appointed by the court, he would not cooperate. He wanted to die.

Even that escape was denied him. Instead he was mentally dissected by psychiatrists and psychologists. He sat in open court to hear, of himself: "He sees people as malevolent, hostile and aggressive—motivated only by the basest of self-centered motives. . . . Intimacy, affection, trust, etc., are totally impossible and absent. . . . He postures grandiosely and resorts to a false bravado to play out the superiority he aspires to." Enough doubt was cast on his sanity so that Prosecutor Calisi felt he could not ask for the death penalty. Urbano pleaded *nolo contendere* to second-degree murder, and on May 24, 1960 he was sentenced to life in the New Jersey State Prison at Trenton by Judge Arthur J. O'Dea.

There, the FBI talked to him for hours and finally got him to admit to 10 bank robberies and two store holdups, but he was very hazy about a number of others. He had no real idea of how much he stole.

It is today, however, more than two years later, that the really incredible part of Urbano's story is happening. Call his friends for information. You are insulted and hung up on. Write them a letter. You get a nasty reply. Those who will talk cite his generosity, never once mentioning it was stolen money that bought the gifts. They refer to his many acts of kindness, forgetting that one man lies in his grave and another has a crooked arm for life because of him.

His friends and former neighbors talk as if it were another man who robbed and murdered. They imply that the psychiatrists themselves are nuts, and that the police are tragically misinformed about the real Bob Urbano. The one they knew couldn't have done those dreadful things. He couldn't possibly have made such fools of them.

Prosecutor Calisi, who understands the three worlds of Robert Urbano, ponders his fourth and final one, and asks, with just a touch of sadness in his voice, "I wonder how he's getting along in prison?"

—Robert Liston

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SUPREME COURT, U. S.

No. 1183

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

ROBERT F. URBANO, *Petitioner,*

—against—

FREDERIC SONDERN, JR., *Respondent,*

and

ROBERT F. URBANO, *Petitioner,*

—against—

FAWCETT PUBLICATIONS, INC., *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, FAWCETT PUBLICATIONS, INC., IN OPPOSITION

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INDEX

	PAGE
Jurisdiction	1
Question Presented	2
Statement	2
Statement of Case	3
Judgment of District Court	5
Judgment of the Court of Appeals	6
Argument	6
POINT I—Petitioner Has Had A Full and Fair Hearing On His Claim For Alleged Libel	6
POINT II—The Action Is Frivolous	7
POINT III—Dismissal of the Action Was Proper and Did Not Constitute an Abuse of Discretion	8
Conclusion	8

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JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was entered on November 29, 1966. Petitioner's motion to extend time to file petition for rehearing or to rehear in banc on papers before the Court was denied on January 6, 1967. Petitioner's motion to remand

this case to the United States District Court for the District of Connecticut was denied January 10, 1967. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED

Whether the Court of Appeals for the Second Circuit abused its discretion in unanimously affirming the order of the District Court of Connecticut dismissing the action for alleged libel as frivolous.

STATEMENT

Petitioner—not a stranger to this Court[1]—seeks his third writ of certiorari in the October, 1966 Term of this Court while serving a life sentence in New Jersey State Prison for the crime of homicide committed in the act of robbing a department store. The facts underlying this petition are set forth in chronological order.

Prior To Publication Of Article Complained Of

January 15, 1960—

Petitioner vaulted the counter in the credit department of Bamberger's Department Store at Garden State Shopping Center, Paramus, New Jersey, brandished a .32 automatic pistol and snarled "This is a holdup! Nobody move!" He then shot John Blanch in the chest and shoulder, Fred Kramer in the arm and Leo Zaritsky in the head. Zaritsky died.

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[1] *Urbano* v. *New Jersey*, 225 F. Supp. 798 cert. den. 377 U. S. 958, aff'd. 333 F. 2d 845, cert den. 379 U. S. 993; *Urbano* v. *Federal Bureau of Investigation*, cert, den. 385 U. S. 862 (October Term, 1966) *Urbano* v. *DeLoach*, cert. den 385 U. S. 1017 (October Term, 1966).

Petitioner was overpowered and disarmed by customers at the store, arrested by Paramus, New Jersey police officers, and taken to the Bergen County Jail in Hackensack, N. J. (App. C 13a pp. 1-2)[2]

January 25, 1960—

Indictment No. S-253-59 charging petitioner with murder while in the commission of a robbery was filed. (R 81)[3]

April 27, 1960—

Petitioner pleaded non vult to the indictment. (R 81)

May 19, 1960—

Petitioner was sentenced to life imprisonment in New Jersey State Prison. (R 81)

September 14, 1960—

Petitioner gave oral and written statements to Donald T. Klinger and Francis C. O'Neil, Special Agents of the Federal Bureau of Investigation, stating that plaintiff had robbed banks and department stores in the Philadelphia, Baltimore, Wilmington and Pittsburgh areas. (R 180-230)

September 14, 1961—

The Federal Bureau of Investigation issued a report (App. C 13a R 83) to the press on the official results of its investigation on petitioner. (R 239)

STATEMENT OF CASE

Petitioner brought suit for alleged libel in the United States District Court for the District of Connecticut upon

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[2]Reference to pages in Appendix of Petition.
[3]Reference to page in Record on Appeal in Court of Appeals.

the claim that he had been libeled by the statement, "He robbed at least 13 banks and 3 department stores . . . of perhaps a quarter million dollars." (R 6, R 58)

The article complained of (App. E 16a, R 8) was published in the January 1963 issue of TRUE Magazine, and was based on the September 14, 1961 report of the Federal Bureau of Investigation. (App. C 13a, R 83) Nowhere in the article was it reported that the petitioner was convicted of any crime other than that to which he pleaded *non vult* to an indictment charging him with murder in the commission of a department store robbery. (R 81)

Petitioner claims he was not *convicted* of robbing a bank, yet by his confessions to agents of the Federal Bureau of Investigation petitioner admitted in 10 written statements that he had robbed banks. (R 180-230)

The District Court in Connecticut on its determination that the petitioner's claim for alleged libel was frivolous had before it the answer of the respondent, Fawcett Publications, Inc., denying generally the allegations of the plaintiff's complaint, pleading the petitioner's *non vult* plea to the indictment charging him with murder in the commission of robbery and plaintiff's sentence to life imprisonment, separate defenses that the article published in the January, 1963 issue of TRUE Magazine was privileged, based upon the official report of the United States Department of Justice, Federal Bureau of Investigation, dated September 14, 1961, that the publication related to matters of public interest which was a proper subject of comment and published on an occasion of privilege in good faith and without malice toward plaintiff, that the occasion of privilege was not abused and that the defendant relied upon good and trustworthy sources in its publication of the article. (R 76, R 259)

These pleaded defenses were documented by exhibits (R 81, R 180-230, R 83, R 239), consisting of the judgment of conviction of the petitionter, certified copies of the 10 confessions signed by the petitioner, affidavits of 2 agents of the Federal Bureau of Investigation to whom plaintiff gave the written statements, as well as a copy of the official report of the United States Department of Justice, Federal Bureau of Investigation, dated September 14, 1961.[4]

Additionally, the respondent's answer denied plaintiff's claim that a retraction was demanded. It is significant that the District Court of Connecticut considered and rejected plaintiff's claim in this regard, finding that petitioner made no timely demand under applicable Connecticut statute. (App. B 10a).

Judgment of the District Court

In his "Memorandum of Decision" (App. B 6a, R 298) District Court Judge Robert C. Zampano, finding as a matter of fact that this action was "frivolous" (9a, R 301), had "a patent lack of merit" (10a, R 302) and "virtually nonexistent" chances of success (10a, R 302), and that "it would be most unfair to require any further expenditure of time, effort and money in these frivolous and futile actions" (12a, R 304), ordered the action dismissed pursuant to 28 U. S. C. § 1915 (d).

[4]The official F. B. I. report of September 14, 1961 (App. C 13a, R 83) documents petitioner's criminal career, as such career was revealed by the F. B. I. investigation, making the statement, "Between 1954 and 1959, 13 bank robberies and two department store holdups were attributed to Urbano," (18a, R 87), with earlier references to the robbing of 4 department stores; Kanns, in Arlington, Virginia; Strawbridge in Wilmington, Delaware; Wanamaker's Department Store at Wilmington, Delaware (17a, R 87); and Bamberger's Department Store in New Jersey, where petitioner shot three people, killing one.

Judgment of the Court of Appeals

The Court of Appeals unanimously affirmed the dismissal of this action as frivolous, noting that it seemed highly unlikely that petitioner "could surmount either the defense of truth, or of qualified privilege to report the activities of public officials." (App. A 3a)

ARGUMENT

There is nothing here present warranting review by this Court on certiorari. There is no important question of Federal law; there are no conflicting decisions in the separate circuits; petitioner has been afforded due process; his underlying action is frivolous, and dismissal thereof pursuant to 28 U. S. C. § 1915 was proper and not an abuse of discretion.

POINT I

PETITIONER HAS HAD A FULL AND FAIR HEARING ON HIS CLAIM FOR ALLEGED LIBEL.

Petitioner has received the utmost cooperation and consideration from the District Court of Connecticut in the prosecution of his alleged claim for libel. The District Court granted the petitioner's application to file his complaint without pre-payment of a fee on November 19, 1963. Thereafter, the District Court granted petitioner's application for appointment of counsel to represent him in this action on January 11, 1966 and only then, after a full hearing was petitioner's claim dismissed as frivolous on June 27, 1966.

Prior to exercising its discretion under 28 U. S. C. § 1915, the District Court had the benefit of all the pleadings, oral argument by counsel for both sides and a voluminous file containing: (1) *pro se* briefs and exhibits numbering hundreds of pages; (2) lengthy affidavits; (3) the F. B. I.

report of September 14, 1961; (4) petitioner's ten written statements admitting the robbery of divers banks and department stores and; (5) Judge Galanti's Order finding petitioner competent to enter his plea of *non vult* to the indictment charging him with the crime of murder committed in the act of robbery. (App. B 9a, R 301)

On the day of the argument of petitioner's appeal in the Court of Appeals for the Second Circuit, November 16, 1966, the Court requested respondents to submit on the appeal, lest argument on the part of respondents without argument by petitioner would, in some way, prejudice the rights of petitioner, to which request respondents consented.

There can be no argument that petitioner did not receive every consideration provided by 28 U. S. C. §1915.

POINT II

THE ACTION IS FRIVOLOUS

The gravamen of petitioner's claim is that he has been libeled by the statement "he robbed at least 13 banks and 3 department stores . . . of perhaps a quarter million dollars." (R 6, 58) This statement was contained in the official F. B. I. report.

This report of September 14, 1961 (App. C 13a R 83), was reported by the respondent in TRUE Magazine; petitioner had *admitted* in written statements that he robbed banks (R 180-230) and pleaded non vult to an indictment charging him with murder in the commission of a department store robbery. (R 81)

This action for damages for injury to the reputation of a convicted murderer and self-admitted bank robber was found devoid of merit and, therefore, frivolous for the following reasons:

(1) The truth of statements complained of in the article —that petitioner robbed banks is established by petitioner's written statements to that effect (R 180-230);

(2) The article complained of was based upon an official report of the Federal Bureau of Investigation published on an occasion of privilege without malice and is privileged; and

(3) The complaint failed to state a claim upon which relief can be granted; the petitioner made no timely demand for a retraction, did not allege actual damage, and the Court found it unlikely that petitioner could prove actual malice. (Conn. Gen. Stat. § 52-327 [1958]; App. B 10a).

POINT III

DISMISSAL OF THE ACTION WAS PROPER AND DID NOT CONSTITUTE AN ABUSE OF DISCRETION.

Petitioner was allowed to proceed *in forma pauperis* and only after a most exhaustive examination of his claim was it dismissed as frivolous. Petitioner has not been deprived of a forum because of his poverty; his claim has been dismissed because it is devoid of merit.

CONCLUSION

It is respectfully submitted that this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court of the United States

October Term, 1966

No. 1183

ROBERT F. URBANO,

Petitioner,

against

FREDERIC SONDERN, JR.,

Respondent,

and

ROBERT F. URBANO,

Petitioner,

against

FAWCETT PUBLICATIONS, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR WENDA SONDERN, EXECUTRIX OF THE ESTATE OF RESPONDENT FREDERIC SONDERN, JR., DECEASED, IN OPPOSITION

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April 7, 1967

TABLE OF CONTENTS

	PAGE
JURISDICTION	1
STATUTES INVOLVED	2
QUESTION PRESENTED	3
STATEMENT OF THE CASE	3
POINT I—The decision below was clearly correct	5
POINT II—Petitioner has shown no ground for granting certiorari	6
CONCLUSION	7

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BRIEF FOR WENDA SONDERN, EXECUTRIX OF THE ESTATE OF RESPONDENT FREDERIC SONDERN, JR., DECEASED, IN OPPOSITION

Jurisdiction

The Order of Affirmance of the United States Court of Appeals for the Second Circuit is dated November 29, 1966, and was entered by the Clerk of that Court on November 29, 1966. A Petition for Rehearing was denied on December

27, 1966. A Motion to Stay Issuance of Mandate Pending Application for a Writ of Certiorari to the Supreme Court of the United States was denied on December 27, 1966.

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Statutes Involved

New York Civil Rights Law

"§74. *Privileges in action for libel*

"A civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding, or for any heading of the report which is a fair and true headnote of the statement published.

"This section does not apply to a libel contained in any other matter added by any person concerned in the publication; or in the report of anything said or done at the time and place of such a proceeding which was not a part thereof."

Connecticut General Statutes

"Sec. 52-237. *Damages in actions for libel.*

"In any action for a libel the defendant may give proof of intention; and unless the plaintiff proves either malice in fact or that the defendant, after having been requested by him in writing to retract the libelous charge, in as public a manner as that in which it was made, failed to do so within a reasonable time, he shall recover nothing but such actual damage as he may have specially alleged and proved."

The text of 28 U.S.C. §1915 is set forth in the Petition at pages 2-3.

Question Presented

Where a libel action has been commenced *in forma pauperis,* and defendant has cross-moved for summary judgment, may the action be dismissed as "frivolous" by the District Court under 28 U.S.C. §1915(d) where:

(a) plaintiff has admitted the facts stated in the allegedly defamatory statement to disinterested witnesses;

(b) plaintiff is presently serving a life sentence for murder committed in the course of robbery;

(c) plaintiff made no demand for retraction and failed to plead special damages;

(d) the allegedly libelous statement was made without malice and was based on a written statement released by an official of the Federal Bureau of Investigation in the course of his official duties; and

(e) plaintiff has abused his privilege of proceeding *in forma pauperis,* having brought at least 13 prior actions, in all of which his claims have either been dismissed or have not yet been adjudicated?

Statement of the Case

This libel action was brought by petitioner in the United States District Court for the District of Connecticut. It is based on an article in the December 1963 issue of "Reader's Digest", written by named respondent Frederic Sondern,

Jr. The article describes a robbery attributed to petitioner and states:

> "His admitted ten bank and two department-store robberies netted him some $200,000." (32a)*

The article nowhere states that Mr. Urbano was convicted of any crime other than the crime for which he is presently serving a life sentence (29a-36a).

The author wrote the article without malice, and has never received a demand for a retraction (A26-A27). The article was based on a report of the Federal Bureau of Investigation (A26). The F.B.I. report was released as an official act of the F.B.I. (A3).

In support of his cross-motion for summary judgment before the District Court defendant author submitted certified copies of the ten confessions signed by plaintiff (A18-A24), affidavits of two F.B.I. agents to whom he made oral confessions (A42-A43), and a certified copy of the opinion of Judge Galanti denying one of Mr. Urbano's applications for a writ of habeas corpus (A34-A41). Judge Galanti's opinion quotes the testimony of two of Mr. Urbano's psychiatric witnesses to whom Mr. Urbano made confessions of his crimes (A37-A38). The opinion also quotes confessions made to two of the State's psychiatric witnesses (A38-A39). The affidavit of Wendell Davis, Jr., submitted in support of defendant's cross-motion, shows that of the 13 or more prior actions commenced by Mr. Urbano, eight were dismissed on the merits, and two other actions were

* Page references to petitioner's appendix on appeal to the United States Court of Appeals for the Second Circuit are indicated by the suffix "a". References to the Executrix's appendix on that appeal are indicated by the prefix "A".

dismissed for lack of jurisdiction (A6-A12). Of the three other actions at least one (*Urbano* v. *Fawcett Publications, Inc.*) has since been dismissed as "frivolous" (Petition Appendix B).

Petitioner is presently serving a life sentence on conviction of murder committed in the course of robbery (A2).

Named respondent Frederic Sondern, Jr. died on or about August 3, 1966 (A47). On October 24, 1966 Wenda Sondern, executrix of his estate, was substituted as defendant by order of the Court of Appeals.

POINT I

The decision below was clearly correct.

The opinion of the District Court dismissing this action as "frivolous" shows that Mr. Urbano has received a full hearing on his claims. The District Court noted that the files in both matters were "voluminous" and that it had a "complete understanding of the claims" and was "satisfied that the actions are frivolous and ought to be dismissed."

Petitioner's position is, apparently, that no one can state that he committed a crime, or even confessed to the crime, until he has actually been convicted of the crime (A45). Even if plaintiff did not actually commit the bank robberies and department store robberies (a hypothesis not supported by the record) it is obvious that a statement that

he admitted commission of the crimes is not actionable where he did, in fact, admit on numerous instances, that he did commit the crimes.

The opinion of the Court of Appeals recognizes the validity in this case of the defense of qualified privilege to report the activities of public officials, in addition to the defense of truth. New York Civil Rights Law §74 confers a privilege for a fair and true report of an official proceeding. This statute has been construed in *Bridgwood* v. *Newspaper PM, Inc.*, 276 App. Div. 858, 93 N.Y.S. 2d 613 (2d Dept. 1949), to cover statements made by prosecuting officials.

Under Connecticut General Statute §52-237 plaintiff can recover nothing unless he affirmatively establishes "malice in fact." The record shows absence of malice (A26-A27), and is barren of any evidence of malice in fact.

The fact that Mr. Urbano had commenced numerous prior frivolous lawsuits was alone sufficient to warrant the District Court's refusal to allow plaintiff to proceed as a poor person under 28 U.S.C. §1915 (*Kinney* v. *Plymouth Rock Squab Co.*, 236 U.S. 43 [1915]).

POINT II

Petitioner has shown no ground for granting certiorari.

The petition shows no conflict between the decision of the Court of Appeals and any other decision of any Court.

Conclusion

For the reasons given it is respectfully submitted that the Petition for a Writ of Certiorari should be denied, with costs to the Executrix.

Respectfully submitted,

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Counsel for
Wenda Sondern, Executrix of Estate
of Respondent Frederic Sondern, Jr.,
Deceased

Of Counsel:
WENDELL DAVIS, JR.
LORD, DAY & LORD

April 7, 1967